

In the Matter of:)
)
Application for Certification))
San Francisco Electric) Docket No. 04-AFC-1
Reliability Project)
)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

William Pfanner, Project Manager

Steve Baker

Gary Reinoehl

Beverly Bastian

David Flores

Alvin J. Greenberg, Consultant
Risk Science Associates

Patrick Pilling
Black Eagle Consulting

PUBLIC ADVISER

Nicholas Bartsch

APPLICANT

Jeanne Sol,, Deputy City Attorney
City and County of San Francisco

Karen Kubick, Project Manager
San Francisco Public Utilities Commission

Emilio "Gene" Varanini, Special Counsel
California Power Authority

APPLICANT

Barbara Hale
San Francisco Public Utilities Commission

Steven A. DeYoung
DeYoung Environmental Consulting

Barry R. Flynn
Flynn RCI

Steven Brock
PB Power

Douglas M. Davy
Thomas Lae
Geoffrey Spaulding
James P. Bushnell
Sarah Madams
Karen Parker
CH2M HILL

Steven Smith

INTERVENORS

Robert Sarvey

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P R O C E E D I N G S

10:05 a.m.

HEARING OFFICER FAY: Good morning.

This is the first day of evidentiary hearings in the San Francisco Electric Reliability project case; AFC docket number 04-AFC-1.

To my right is Presiding Committee Member Jim Boyd; to my left is Associate Committee Member John Geesman. To Mr. Boyd's right is Peter Ward, his Advisor. And I'm Gary Fay, the Hearing Officer for this case.

I'd like to take appearances beginning with the applicant, please.

MS. SOL : Good morning, Commissioners; I'm Jeanne Sol, for the City and County of San Francisco.

MR. VARANINI: I'm Gene Varanini; I'm with the California Power Authority; and I am assisting Ms. Sol,.

HEARING OFFICER FAY: Staff.

MS. HALE: Good morning, --

HEARING OFFICER FAY: Oh, I'm sorry.

MS. HALE: -- I'm Barbara Hale, Assistant General Manager for Power at the San Francisco Public Utilities Commission.

1 HEARING OFFICER FAY: Welcome.

2 MS. HALE: Thank you.

3 MR. RATLIFF: Dick Ratliff, Counsel for
4 staff. And with me is Bill Pfanner, the Project
5 Manager from staff.

6 MR. SARVEY: Bob Sarvey, Intervenor.

7 HEARING OFFICER FAY: All right. And
8 you're here on your own behalf, correct, Mr.
9 Sarvey?

10 MR. SARVEY: That's correct.

11 HEARING OFFICER FAY: Is a
12 representative of CARE here? Okay. Any other
13 parties in the case represented here today? All
14 right, I see no indication.

15 Is the Public Adviser's Office
16 represented? Nick, did you want to say anything
17 at this time?

18 MR. BARTSCH: Nothing except Mr. Mike
19 Boyd of CARE is in Detroit and we've made
20 arrangements for him to be able to call in if he
21 wants to talk.

22 HEARING OFFICER FAY: Okay.

23 MR. BARTSCH: We have not received a
24 call back from him yet, so we are watching.

25 HEARING OFFICER FAY: So you've done the

1 connection at this end --

2 MR. BARTSCH: Yes.

3 HEARING OFFICER FAY: -- and he hasn't
4 responded?

5 MR. BARTSCH: Yes, correct.

6 HEARING OFFICER FAY: Okay, and this is
7 on his request?

8 MR. BARTSCH: At his request.

9 HEARING OFFICER FAY: Okay, thank you.

10 All right. This is the first set of evidentiary
11 hearings for the proposed San Francisco Electric
12 Reliability project. The Committee noticed the
13 hearings for today and next Monday in a notice and
14 order issued on April 10th. That document also
15 contained filing dates for testimony and indicated
16 that we will also conduct evidentiary hearings on
17 May 22nd and May 31st in San Francisco.

18 At the conclusion of today's evidentiary
19 presentations the Committee will hold a brief
20 conference to review the parties' respective
21 positions on items to be heard at future hearings.
22 We're especially interested in any movement in the
23 parties' positions that may have occurred since
24 our prehearing conference.

25 In addition to the February 21, 2006

1 final staff assessment and the AFC document and
2 its associated supplements, other filings
3 pertinent to this set of hearings include
4 applicant's and intervenors' prepared testimony
5 and exhibits for these hearings filed April 17th;
6 staff's supplementary testimony filed April 10th;
7 the April 13th staff errata to FSA sections on air
8 quality and cultural resources; the April 14th
9 staff filing of Cal-ISO testimony of Lawrence
10 Tobias; the April 17th staff errata to soil and
11 water condition of certification 13.

12 The purpose of these formal evidentiary
13 hearings is to establish the factual record
14 necessary to reach a decision in this case. This
15 is done through the taking of oral and written
16 testimony, as well as exhibits from the parties.

17 These hearings are more structured than
18 the Committee conferences and the informal staff
19 workshops which have already occurred.

20 A party sponsoring a witness shall
21 briefly establish the witness' qualifications.
22 And by briefly that may mean just referring to the
23 written r, sum, that we have in our record, and can
24 rely on. As well as have the witness orally
25 summarize the prepared testimony before requesting

1 the testimony be moved into evidence.

2 Because of the severe time constraints
3 we have today, I emphasize that the summary should
4 be as brief as possible because we will read your
5 written testimony. And so you needn't repeat
6 anything in it. Relevant exhibits may be offered
7 into evidence at that time, as well.

8 At the conclusion of a witness' direct
9 testimony the Committee will provide the other
10 parties, who have so requested, an opportunity for
11 cross-examination, followed by redirect and
12 recross-examination, as appropriate. At the
13 conclusion of each topic area we will provide an
14 opportunity for public comment on that topic.

15 Is there anybody here today who may be
16 interested in making public comment? I see no
17 indication.

18 The parties are encouraged to
19 consolidate presentations by witnesses and/or
20 cross-examination to the greatest extent possible
21 in order to minimize duplication and conserve
22 hearing time. Parties sponsoring multiple
23 witnesses on a topic area should have those
24 witnesses testify as a panel.

25 Now we have, I believe we have at least

1 one witness that will not be able to testify
2 today. And that is Mr. DaCosta for Mr. Sarvey
3 because no written testimony was filed, is that
4 correct, Mr. Sarvey?

5 MR. SARVEY: That's correct.

6 HEARING OFFICER FAY: Okay. Are there
7 any other witnesses that will not be testifying as
8 per attachment A in the notice?

9 MS. SOL : Your Honor, I actually was
10 hoping that we could go through attachment A.
11 There are a number of places where intervenor
12 testimony is, you know, referred to and we did not
13 receive it. So I don't know if it's possible to
14 do that quickly?

15 HEARING OFFICER FAY: Okay. We can do
16 that at this point. Does everybody have a copy of
17 attachment A? Okay. Ms. Sol,.

18 MS. SOL : Yeah. We did not receive
19 testimony on cultural resources for Mr. DaCosta.

20 HEARING OFFICER FAY: And none was
21 filed; no party received any.

22 MS. SOL : Okay. We received testimony
23 from Lynne Brown, but that was characterized as
24 environmental justice and purpose and need. I
25 didn't see anything on geology and paleontology in

1 that testimony.

2 HEARING OFFICER FAY: I found a sentence
3 that referred to liquefaction on page 2 of that
4 testimony.

5 MS. SOL : All right.

6 HEARING OFFICER FAY: And I gave Mr.
7 Brown the benefit of the doubt.

8 MS. SOL : Okay. How are we going to
9 handle Mr. Brown's testimony?

10 HEARING OFFICER FAY: Well, we'll see if
11 Mr. Brown submitted a declaration. If he's not
12 here to sponsor his testimony on geology and
13 didn't submit a declaration, then it would be
14 public comment.

15 MS. SOL : Mr. Brown's testimony was
16 also characterized as partly purpose and need, so
17 I just wanted to know, are we going to deal with
18 some aspects of his testimony as part of topic
19 one, and then the rest of it as part of EJ?

20 HEARING OFFICER FAY: I'm just not sure
21 if we have a declaration on that. If we do, then
22 you may want to rebut it. If there's no
23 declaration and no Mr. Brown, then it will be
24 deemed public comment.

25 MS. SOL : Okay. I did have an

1 objection to the introduction to the attachment to
2 his testimony, which was the transcript of the
3 Jefferson-Martin proceedings. Is this the
4 appropriate time to deal with that objection?

5 HEARING OFFICER FAY: Sure, why don't
6 you make your objection and state your reasons for
7 it.

8 MS. SOL : That is testimony by a
9 witness who has not been brought here. The rule
10 on using testimony from another proceeding is that
11 the witness who gave that evidence is not
12 available. I'm not aware that Mr. Manho is not
13 available, unavailable, is generally considered to
14 be out of state or deceased or severely ill.

15 So I'm unaware of any effort to bring
16 Mr. Manho. He is not an unavailable witness, and
17 therefore it's inappropriate to bring a transcript
18 from another proceeding into this proceeding for
19 the truth of the matter.

20 HEARING OFFICER FAY: Does your
21 objection go to whether or not the Committee could
22 take administrative notice of that meeting and
23 transcript of a California Public Utilities
24 Commission hearing?

25 MS. SOL : They can take notice of its

1 being a transcript. It's just the contents of the
2 transcript is not admissible for the truth of the
3 matter because that's prior testimony of the
4 witness. And the rule for prior testimony of the
5 witness is that that witness has to be
6 unavailable.

7 HEARING OFFICER FAY: Okay. And is
8 anybody here from CARE to rebut this objection?

9 Mr. Boyd, are you on the line? Okay.

10 We'll take that under submission.

11 MS. SOL : Okay.

12 HEARING OFFICER FAY: Anything further,
13 Ms. Sol,?

14 MS. SOL : Actually I also had some
15 objections to some of the documents that were
16 submitted with Mr. Sarvey's testimony. I'm going
17 to try to focus on the documents that might relate
18 to the topics today.

19 There were three documents that arguably
20 relate to the topics today that I had objections
21 to, the City's prehearing conference statement in
22 Potrero 7; the City's comments on the PSA in
23 Potrero 7; and a presentation on the TransBay
24 Cable. I don't know if you want to deal with
25 those now or --

1 HEARING OFFICER FAY: Can we take those
2 up at the time that -- or under the topic which
3 Mr. Sarvey intended to introduce them? I think it
4 would just --

5 MS. SOL : Sure.

6 HEARING OFFICER FAY: -- be cleaner for
7 the record at that time.

8 MS. SOL : Sure. Okay. And then I'll
9 just, finishing up on the areas where I had
10 expected to see testimony and didn't, we talked
11 about cultural resources. I did not receive
12 Sarvey testimony for waste management; that's for
13 May 1st. I received Mr. Sarvey's testimony on
14 hazardous materials.

15 HEARING OFFICER FAY: It's been brought
16 to our attention that the attachment A and B
17 placed out on the front table may have been
18 missing the second page. So, if you grab one on
19 the front table, be sure to get one of the revised
20 ones.

21 And, Mr. Sarvey, also there'll be
22 exhibits lists out there if you need a copy of the
23 exhibit list, or if anybody else needs a copy of
24 the exhibit list, it is out on the front table
25 now. I'm sorry for the interruption, go ahead.

1 MS. SOL : Again, I was just pointing
2 out that I have testimony from Mr. Sarvey on
3 hazardous materials, but I didn't see separate
4 testimony on waste management. And just wanted to
5 make sure that I'm not missing something.

6 HEARING OFFICER FAY: Can we clear that
7 up?

8 MR. SARVEY: Yeah, the order stated that
9 the testimony on that would be due on May 1st, so
10 we will not submit our testimony till May 1st.
11 The order gave all parties an opportunity under
12 waste management to --

13 HEARING OFFICER FAY: Oh, yes, in terms
14 of the rebuttal to the staff testimony on that.

15 MR. SARVEY: Correct.

16 HEARING OFFICER FAY: So it's that
17 narrow area.

18 MR. SARVEY: Yes, --

19 HEARING OFFICER FAY: Okay.

20 MR. SARVEY: -- that's when we'll
21 submit --

22 HEARING OFFICER FAY: And your concerns
23 were in that --

24 MR. SARVEY: -- we'll submit our
25 testimony on that --

1 HEARING OFFICER FAY: -- specific area?

2 MR. SARVEY: Exactly.

3 HEARING OFFICER FAY: Okay, fine.

4 MR. SARVEY: Thank you.

5 MS. SOL : And is that also the case for
6 the soil and water resources?

7 MR. SARVEY: Yes.

8 MS. SOL : Okay. Okay, but, similarly I
9 had not received soil and water resources from Mr.
10 Sarvey, Mr. Lynch, Mr. Brown or Mr. Powers. But
11 if that relates to the contamination then I agree
12 that the due date is May 1st.

13 HEARING OFFICER FAY: Okay, anything
14 further?

15 MS. SOL : No.

16 HEARING OFFICER FAY: Any preliminary
17 matters from your point of view, Mr. Ratliff?

18 MR. RATLIFF: None that I can think of,
19 no.

20 HEARING OFFICER FAY: Okay. Mr. Sarvey?

21 MR. SARVEY: No.

22 HEARING OFFICER FAY: Okay. Then I'll
23 continue. I'd like to point out a few things
24 before we begin that will assist in the efficiency
25 of conducting the hearings.

1 Unless you have prefiled testimony for
2 your witnesses directed in the hearing order you
3 will not be allowed to have the witness testify.
4 Please don't be repetitive in asking questions.
5 If someone else has asked the same question, it
6 doesn't need to be asked again.

7 Several different parties interested in
8 the same matters should consolidate their
9 representations in questioning where possible.

10 Questioning must be limited to relevant
11 matters within the scope of the witness'
12 testimony. I'll add, in addition to relevant, we
13 are here today to gather facts for the record. If
14 what your concern is, is really a legal question,
15 then that should be argued in the briefs and not
16 argued here. So, we're going to try to be just as
17 efficient as we can; stick just to adjudicating
18 facts.

19 Please don't argue with the witness;
20 don't testify while cross-examining a witness.
21 When asking a question, refer to a specific page
22 of the witness' testimony and/or exhibit. That's
23 not only a courtesy to the witness and makes it
24 more efficient for the witness to turn to that,
25 but it will help us understand your point later

1 when we're writing the decision with the help of
2 the transcript. So, it's in your interest to
3 reference all these things.

4 Direct testimony must involve matters
5 within the witness' personal knowledge. This goes
6 to the point Ms. Sol, raised. There are several
7 rules for witnesses who qualify as experts.
8 Experts, by virtue of their education and
9 experience, are allowed to render expert opinions
10 based on studies, reports, et cetera.

11 Since the Committee issued its notice on
12 April 10th, the following documents have been
13 issued and events have occurred in this case. And
14 I'd like people to listen in case I miss anything.
15 But we'll go through this recitation.

16 On April 10th the staff filed the
17 supplementary testimony on waste management and
18 soil and water resources; April 13th staff filed
19 its errata to the FSA sections on air quality and
20 cultural resources.

21 April 13th a letter to the Committee
22 from Steven Moss of the San Francisco Power
23 opposing a proposal for applicant to provide
24 offset funds to retrofit fireplaces and wood
25 stoves.

1 April 13th applicant's motion for an
2 extension of time and change of schedule. April
3 14th Committee's order granting the applicant's
4 requested time extension. April 14th staff filed
5 the Cal-ISO testimony of Lawrence Tobias.
6 However, that Tobias testimony is dated March
7 10th, we note.

8 At close of business on April 14th CARE
9 filed its own motion for extension and change of
10 hearing schedule. April 17th both staff and
11 applicant filed responses in opposition to CARE's
12 motion.

13 April 17th staff filed its errata to
14 soil and water condition of certification 13.
15 April 17th applicant filed its testimony as per
16 Committee order. But also filed an exhibit list
17 with the revisions, additions and change of
18 witnesses.

19 April 17th Sarvey filed testimony as per
20 Committee order, but apparently the Commission
21 distribution service did not serve the testimony
22 accurately. And that, I understand, has since
23 been remedied.

24 April 19th San Francisco Community Power
25 filed a motion to file late testimony regarding

1 emission offsets and community mitigation funds.
2 April 20th the Committee issued its ruling on the
3 CARE motion seeking an extension of time, which
4 basically denied CARE's motion.

5 On April 21st the Committee issued a
6 ruling regarding San Francisco Power's motion
7 granting leave to file testimony on limited areas
8 by May 1. On April 21st intervenors Potrero
9 Boosters Neighborhood Association and Dogpatch
10 Neighborhood Association filed a similar motion
11 seeking to file late testimony and to require
12 community benefit funds be included as a condition
13 of certification.

14 April 24th CARE filed a petition for the
15 full Commission review of the Committee ruling
16 denying CARE's previous motion that sought an
17 extension of time. April 25th the Committee
18 scheduled CARE's petition for full Commission
19 review at the next available business meeting; and
20 that will be May 24th.

21 And yesterday the Committee issued a
22 ruling regarding the intervenors PBNA and DNA,
23 those are the neighborhood associations, motion,
24 again granting leave to file limited testimony by
25 May 1st. And then just this morning we received

1 an objection from CARE to today's hearing being
2 conducted at all.

3 Is everybody up to date? All right.

4 Then we'd like to begin the
5 presentations. We will be following, but for some
6 of the exceptions noted, the attachment A
7 schedule. And if your witness listed on
8 attachment A is not here today, please call that
9 to our attention, or if there are any other
10 changes to that schedule.

11 I'll just note that as per the
12 Committee's order in response to applicant's
13 request, the topic of traffic and transportation
14 has been moved to May 1.

15 Anything else preliminary before we get
16 started?

17 Okay, then, Ms. Sol,, we'll begin with
18 the applicant.

19 MS. SOL : Good morning, Commissioners.
20 The first thing I'd like to do is just to clarify
21 the sections of our testimony that belong in this
22 topic. Our topics were in the supplement A, and
23 in some of our submissions, where it didn't
24 exactly track the FSA and the hearing notice.

25 I have attempted, in our testimony, to

1 correlate the sections to the topic. And the
2 testimony includes the list of all of the sections
3 and data responses that were submitted that belong
4 in this topic.

5 And so I understand introduction,
6 project description and purpose and need to
7 include executive summary, our sections on project
8 description, engineering and natural gas supply,
9 and our section on purpose and need, which are the
10 first three sections of our testimony.

11 The witnesses are Ms. Barbara Hale, Ms.
12 Karen Kubick, Mr. Steve Brock, Mr. Steve DeYoung
13 and Mr. Barry Flynn. They're all here today.
14 Shall I -- are they going to be sworn in?

15 HEARING OFFICER FAY: Yes.

16 MS. SOL : Okay. Shall I have them
17 state their name for the record first, and their
18 qualifications?

19 HEARING OFFICER FAY: Please.

20 MS. SOL : Okay.

21 HEARING OFFICER FAY: Or, just state
22 their name. We'll swear the witnesses and then
23 get their qualifications.

24 MS. SOL : Okay. Ms. Barbara Hale,
25 could you please give your name for the record.

1 MS. HALE: Yes, Barbara Hale, H-a-l-e.

2 MS. KUBICK: Karen Kubick, K-a-r-e-n
3 K-u-b-i-c-k.

4 MR. BROCK: Steve Brock, B-r-o-c-k.
5 That's Steve, e-v-e.

6 MR. FLYNN: Barry Flynn, B-a-r-r-y
7 F-l-y-n-n.

8 MR. DeYOUNG: Steve DeYoung, D-e-
9 Y-o-u-n-g.

10 HEARING OFFICER FAY: Okay, will all the
11 witnesses please stand to be sworn in.
12 Whereupon,

13 KAREN KUBICK, STEVEN BROCK, STEVEN DeYOUNG,
14 BARBARA HALE and BARRY FLYNN
15 were called as witnesses herein, and after first
16 having been duly sworn, were examined and
17 testified as follows:

18 MS. SOL : The qualifications of all
19 these witnesses were submitted as appendix A to
20 the prehearing conference statement. Is that
21 sufficient?

22 HEARING OFFICER FAY: Yes.

23 MS. SOL : Okay. We have prepared
24 testimony that includes references to the exhibit
25 numbers in the exhibit list. Would it be helpful

1 to circulate copies of those to parties?

2 HEARING OFFICER FAY: It would be.

3 MS. SOL : Okay.

4 UNIDENTIFIED SPEAKER: I've already done
5 it.

6 MS. SOL : Oh, it's been done.

7 HEARING OFFICER FAY: It's already --
8 okay. So all the parties have received copies of
9 your testimony that includes reference to relevant
10 exhibits, is that correct?

11 MS. SOL : I believe that's correct.

12 HEARING OFFICER FAY: Okay.

13 MS. SOL : All of the parties who are
14 present here today.

15 HEARING OFFICER FAY: Okay, good.

16 MS. SOL : Okay. So, I'm going to take
17 this section by section. With regards to the
18 executive summary, the witnesses sponsoring that
19 section are Ms. Kubick and Ms. Hale.

20 DIRECT EXAMINATION

21 BY MS. SOL :

22 Q Ms. Kubick and Ms. Hale, the documents
23 that are being sponsored through the executive
24 summary, could you please read those off and their
25 exhibit number?

1 MS. HALE: That would be supplement A to
2 the application for certification for the San
3 Francisco Electric Reliability project, volume 1,
4 dated March 24th of '05, section 2, titled
5 executive summary. And it appears as exhibit 15.

6 And supplement A to the application for
7 certification for the San Francisco Electric
8 Reliability project, volume 2, appendix 1A and 1B,
9 dated March 24th of '05, exhibit 15.

10 MS. SOL : Do you have any corrections
11 or additions to those documents at this time?

12 MS. HALE: No, I do not.

13 MS. SOL : Are the facts contained in
14 those documents true to the best of your
15 knowledge?

16 MS. HALE: Yes, they are.

17 MS. SOL : To the extent that there are
18 opinions in those documents, do they represent
19 your professional judgment?

20 MS. HALE: Yes, they do.

21 MS. SOL : And do you adopt these
22 documents as your sworn testimony here today?

23 MS. HALE: Yes.

24 MS. SOL : Your Honor, we had spoken
25 about brief summaries, and I was willing to

1 dispense with those in the interest of using the
2 time most effectively. Is that appropriate?

3 HEARING OFFICER FAY: That would be
4 fine. Sometimes applicants feel it's important to
5 get the introduction out, but, you know, we will
6 read it.

7 MS. SOL : We're willing to rely on our
8 testimony, and I realize that we have short,
9 valuable hearing time.

10 HEARING OFFICER FAY: Okay.

11 MS. SOL : So, with that, I would like
12 to make the -- oh, I'll go ahead with the next
13 section. The next section is project description,
14 engineering and natural gas supply. The witnesses
15 associated with those topics are Karen Kubick,
16 Steve Brock and Steve DeYoung.

17 Perhaps Ms. Kubick can come in and
18 represent the panel as to that topic.

19 HEARING OFFICER FAY: What I would ask
20 is where you've cited exhibits, if that is a
21 portion of the exhibit, please indicate that, as
22 opposed to the entire exhibit.

23 MS. KUBICK: Okay.

24 HEARING OFFICER FAY: I think in many
25 cases it's contained within and is a portion of

1 the cited exhibit.

2 And then I'd also ask if you, at the
3 conclusion of these presentations, would move all
4 the exhibits before we turn to the staff.

5 MS. SOL : Okay.

6 MR. SARVEY: Your Honor.

7 HEARING OFFICER FAY: Yes.

8 MR. SARVEY: Natural gas supply is
9 covered under topic number 9, power plant
10 reliability and gas supply, so I don't see its
11 purpose right at this point in time.

12 HEARING OFFICER FAY: Well, it was on
13 the schedule for today. Mr. Sarvey, would that
14 put you at a disadvantage if they just present it
15 now? I think that's how they happened to have
16 organized it.

17 MR. SARVEY: Not as long as we can
18 discuss it under power plant reliability, I have
19 no problem with it.

20 HEARING OFFICER FAY: Well, the
21 witnesses will still be available at that later
22 time, won't they, Ms. Sol,?

23 MS. SOL : Yes, they will be.

24 HEARING OFFICER FAY: Okay.

25 MR. SARVEY: Okay, thank you.

1 HEARING OFFICER FAY: Sure.

2 MS. KUBICK: I believe these all fall
3 into the category of partial. The first one is
4 application for certification for San Francisco
5 Electric Reliability project dated March 2004,
6 Volume 2, Appendix 6, as exhibit 1.

7 Supplement in response to data adequacy
8 comments on the application for certification for
9 the SFERP, questions on reliability dated April
10 16, 2004, as exhibit 2.

11 Applicant's response to San Francisco
12 Community Power data requests, data response set
13 1, responses to data request 2-3 dated August 18,
14 2004. No exhibit for data request 2-3. Exhibit
15 12 is for data request 6, 8 and 9.

16 Applicant's response to CEC Staff data
17 requests and formal data response set for
18 responses to data requests 155 and 156 dated
19 August 27, 2004, exhibit 10.

20 Supplements A to the application for
21 certification for the San Francisco Electric
22 Reliability project, Volume 1, dated March 24,
23 2005, section 2, project description, section 6,
24 natural gas supply, and section 10, engineering as
25 exhibit 15.

1 Supplements A to the application for
2 certification for the San Francisco Electric
3 Reliability project, Volume 2, dated March 24,
4 2005, appendices 10A through 10G, exhibit 15.

5 Applicant's response to CEC Staff data
6 request data response set 3A, final. Responses to
7 data requests 179 and 180, dated June 3, 2005, as
8 exhibit 19.

9 Applicant's response to CARE data
10 requests data response set 3. Response to data
11 request 3.3-1, dated June 9, 2005, as exhibit 25.

12 Applicant's response to CEC Staff data
13 request, informal data response set 4, response to
14 data request 154, dated August 27, 2004, exhibit
15 10.

16 Applicant's comments on the preliminary
17 staff assessment set 1, comments 8 through 11, 71,
18 81, 82 and 91, dated October 12, 2005, as exhibit
19 29.

20 Amendment to the project description,
21 vegetated swale, dated November 18, 2005, as
22 exhibit 17.

23 Amendment to the project description,
24 process and cooling water supply, dated December
25 20, 2005, as exhibit 18.

1 Supplement B to the application for
2 certification for the San Francisco Electric
3 Reliability project dated January 11, 2006,
4 exhibit 16.

5 Applicant's comments on the final staff
6 assessment set 1, dated March 17, 2006, number 91,
7 exhibit 45.

8 MS. SOL : I just have a question. On
9 applicant's comments on the preliminary staff
10 assessment set 1, could you re-read the answers to
11 the question, the numbers to the questions?

12 MS. KUBICK: Can I have you just
13 indicate? Comments 8 through 11, 77, 81, 82 and
14 91, dated October 12, 2005, as exhibit 39.

15 MS. SOL : Okay. Do you have any
16 changes or additions to make to this?

17 MS. KUBICK: No.

18 MS. SOL : I understood that Mr. Flynn
19 had some changes to make to these documents?

20 MS. KUBICK: With the addition of Barry
21 Flynn's testimony on purpose and --

22 MS. SOL : Okay. So, then you do not
23 have any corrections. To the extent there are
24 facts contained in these documents, are they true
25 to the best of your knowledge?

1 MS. KUBICK: Yes, they are.

2 MS. SOL : And to the extent there are
3 opinions set forth in these documents, do they
4 represent your professional judgment?

5 MS. KUBICK: Yes, they do.

6 MS. SOL : And do you adopt these
7 documents as your sworn testimony in this case
8 today?

9 MS. KUBICK: Yes, I do.

10 MS. SOL : Thank you.

11 MS. KUBICK: Okay.

12 MS. SOL : Your Honor, would it be
13 helpful, perhaps, to just ask the witnesses to
14 look at the list of exhibits, and ask them whether
15 the list of exhibits is correct, as opposed to
16 having them read through the entire list?

17 HEARING OFFICER FAY: I believe we've
18 got their declaration; we've got the testimony
19 with the list of exhibits. I think that's
20 satisfactory. If you want to just move the
21 testimony with the exhibits, you'd probably be all
22 set.

23 MS. SOL : Okay. Perhaps we can do that
24 so that we don't take up so much hearing time
25 reading things that are written, and then having

1 potential misreadings of numbers.

2 One item that I would like to identify,
3 though, is that applicant's response to San
4 Francisco Community Power data request 2 through
5 3, there's no exhibit number for that.

6 HEARING OFFICER FAY: Would you like it
7 to receive an exhibit number?

8 MS. SOL : Perhaps the appropriate thing
9 would be to change -- exhibit 12 talks about that
10 data response, but it references data requests 6,
11 8 and 9 as opposed to 2 through 3.

12 HEARING OFFICER FAY: I'm sorry, and
13 what are you asking?

14 MS. SOL : Well, either we could correct
15 the exhibit list to add requests 2 and 3; or we
16 would have to create a new exhibit number.

17 HEARING OFFICER FAY: Well, if it's
18 relevant to exhibit 12, is that what you said?
19 It's the same subject matter?

20 MS. SOL : It's the same set of data
21 responses.

22 HEARING OFFICER FAY: Okay, and how was
23 the exhibit served? Did it include the responses
24 to the San Francisco Community Power data request?

25 MS. SOL : It included responses to all

1 of the data requests.

2 HEARING OFFICER FAY: Okay, so if we
3 look in the file under exhibit 12, we will find
4 those responses, correct?

5 MS. SOL : Yes.

6 HEARING OFFICER FAY: All right. Well,
7 I think you've made the correction then.

8 MS. SOL : Okay.

9 HEARING OFFICER FAY: We'll just correct
10 your testimony accordingly.

11 MS. SOL : Okay.

12 BY MS. SOL :

13 Q So, perhaps, Ms. Hale, we can take up
14 purpose and need. Do you have before you the
15 section entitled purpose and need?

16 MS. HALE: I do.

17 MS. SOL : Do you have any corrections
18 or changes to make to that section?

19 MS. HALE: I'd like Mr. Barry Flynn to
20 present those changes, please.

21 MS. SOL : Okay.

22 MR. FLYNN: I had two changes to add.
23 One with regard to timing; the other one with
24 regard to Mr. Sarvey's testimony on ratepayer
25 impacts.

1 The applicant is now expecting the San
2 Francisco Electric Reliability project and the
3 installation of a turbine at the San Francisco
4 Airport to be complete by the summer of 2008.

5 The California Independent System
6 Operator's action plan for San Francisco assume
7 the RMR agreement for Potrero 3 would be canceled
8 following the installation of the City's turbines;
9 and the RMR agreement for Potrero 4, 5 and 6 would
10 occur later when four transmission projects are in
11 operation, which was scheduled at the time of the
12 action plan development, has to occur by the
13 summer of 2007.

14 It is my understanding that two of the
15 four transmission projects needed to eliminate the
16 RMR agreement for Potrero 4, 5 and 6 will be
17 delayed until late 2007. Nonetheless, the
18 transmission additions needed to eliminate the RMR
19 agreement for Potrero 4, 5 and 6 should be in
20 place by the summer of 2008.

21 Thus, by the time the turbines are
22 installed the Cal-ISO should be able to cancel the
23 RMR agreements for all of Potrero, including units
24 3, 4, 5 and 6.

25 The other statement was concerning Mr.

1 Sarvey's testimony which discusses how costly
2 peaking plants can be on a dollars per kilowatt
3 hour basis. I don't believe it is appropriate to
4 evaluate peaking power plants solely on a dollars
5 per kilowatt hour basis.

6 Peaking power plants can be very costly
7 on a dollars per kilowatt hour basis, and still be
8 a cost effective component of a least-cost mix of
9 generation resources.

10 Electric utility systems are planned to
11 provide highly reliable service for a highly
12 fluctuating load. Total generating capacity
13 usually is built to exceed the expected highest
14 hourly peak load plus a reserve margin. The CPUC
15 has recently set a reserve margin of 15 to 17
16 percent for California.

17 If a power plant provides this reserve
18 service its expected cost on a kilowatt hour basis
19 could be infinity if it doesn't produce any
20 kilowatt hours, even though it could be the most
21 cost effective way to provide the service.

22 Thank you.

23 MS. HALE: That completed the changes,
24 Ms. Sol,.

25 MS. SOL : Okay. And so do you have

1 before you a list of documents sponsored under the
2 testimony purpose and need?

3 MS. HALE: I do.

4 MS. SOL : And with the changes that Mr.
5 Barry just provided are the facts contained in
6 these documents true to the best of your
7 knowledge?

8 MS. HALE: Yes.

9 MS. SOL : And with the changes that Mr.
10 Flynn just gave, to the extent there's opinions
11 given within those documents, do they represent
12 your professional judgment?

13 MS. HALE: Yes.

14 MS. SOL : Do you sponsor these
15 documents are your sworn testimony in this case
16 today?

17 MS. HALE: I do.

18 MS. SOL : Your Honor, I would like --
19 should I move now to have the documents admitted
20 into evidence?

21 HEARING OFFICER FAY: That would be
22 appropriate.

23 MS. SOL : Okay, then I would like to do
24 so.

25 HEARING OFFICER FAY: Is there any

1 objection to applicant's motion to introduce the
2 named exhibits, previously named exhibits into the
3 record?

4 MR. RATLIFF: No.

5 MR. SARVEY: No objection.

6 HEARING OFFICER FAY: Okay.

7 MS. SOL : The witnesses are available
8 for cross-examination.

9 HEARING OFFICER FAY: Thank you. Mr.
10 Ratliff?

11 MR. RATLIFF: No questions.

12 HEARING OFFICER FAY: Mr. Sarvey?

13 MR. SARVEY: Yeah, I have some questions
14 in the area of purpose and need.

15 CROSS-EXAMINATION

16 BY MR. SARVEY:

17 Q I want to draw the witness' attention to
18 page 3-6 of exhibit supplement A, which would be
19 exhibit 12, I believe -- no -- exhibit 15.

20 MS. SOL : Mr. Sarvey, I'm sorry, I
21 didn't hear which page number.

22 MR. SARVEY: Page 3-6 of exhibit 15,
23 please.

24 MS. SOL : Thank you.

25 //

1 BY MR. SARVEY:

2 Q Are the witnesses ready?

3 MS. HALE: Yes, thank you.

4 MR. SARVEY: Under caption 3.4.1.2 it
5 says that one of the needs of this project is to
6 release the Hunter's Point Power Plant from its
7 applicable RMR agreement.

8 Are the witnesses aware that the
9 Hunter's Point Power project has already been
10 scheduled for closure in June of 2006?

11 MS. HALE: Mr. Sarvey, the section that
12 you're drawing my attention to 3.4.1.2, --

13 MR. SARVEY: Um-hum.

14 MS. HALE: -- says that the action plan
15 describes the requirements to release all four
16 units at the Hunter's Point Power Plant. I don't
17 see where this text says that this project causes
18 the release of the RMR requirement for Hunter's
19 Point. Could you direct me to where that is,
20 please? Or did I misunderstand your statement?

21 MR. SARVEY: I think you misunderstood
22 my statement. What I'm saying is that this
23 project has nothing to do with the closure of the
24 Hunter's Point Power Plant. Whether this project
25 is sited or not, the Hunter's Point Power Plant

1 will close June 6th. You're aware of that?

2 HEARING OFFICER FAY: Is that a
3 question?

4 MR. SARVEY: I'm asking if she's aware
5 of it, regardless of whether this project is sited
6 or not. That the Hunter's Point Power Plant will
7 be closed in June of 2006.

8 MS. HALE: I am aware that it will
9 close. I'm not certain it will be June.

10 MR. SARVEY: Okay. On page 1-5 of
11 exhibit 15, it states that the applicant believes
12 there will be PM10 impacts to both Potrero and Bay
13 View Hunter's Point, is that correct?

14 MS. HALE: You referred me to page 1-5?

15 MR. SARVEY: Yes.

16 MS. HALE: And I'm sorry, I was looking
17 for the page and didn't catch your question.

18 MR. SARVEY: States that the applicant
19 believes there will be PM10 impacts to both
20 Potrero and Bay View Hunter's Point. You believe
21 that's correct? Is that your testimony?

22 MS. HALE: Yes.

23 MR. SARVEY: Okay. On page 3-7 of your
24 testimony in exhibit 15 you state that the SFERP
25 will reduce NOx --

1 MS. HALE: I'm sorry, Mr. Sarvey, if I
2 could please ask you to slow down so I can catch
3 up with you?

4 MR. SARVEY: Sure.

5 MS. HALE: The page number, again?

6 MR. SARVEY: Page 3-7 of your testimony,
7 exhibit 15.

8 MS. HALE: Okay, I'm at 3-7, yes.

9 MR. SARVEY: Okay. You state that the
10 SFERP will reduce NOx emissions thereby supporting
11 environmental justice. You're aware that there
12 have been no NO2 violations in the project area?

13 MS. SOL : Objection, Your Honor, this
14 is outside the area of this witness' testimony.

15 HEARING OFFICER FAY: Well, Ms. Hale was
16 not represented as an air quality expert, so do
17 you have a response to that, Mr. Sarvey?

18 MR. SARVEY: Just that that's what her
19 testimony says, that it's going to reduce NOx
20 emissions in support of environmental justice. I
21 just wanted her to clarify what that means.

22 HEARING OFFICER FAY: Well, if she
23 claimed that in her testimony then we can hold her
24 responsible for that. Why don't you go ahead and
25 ask your question. Overruled.

1 BY MR. SARVEY:

2 Q Well, as I said, the section 3.4.2, the
3 SFERP will facilitate the reduction of NOx
4 emissions and thereby reduce other environmental
5 effects and support environmental justice.

6 And my question was, are you aware that
7 there's no NO2 violations and that NOx levels are
8 one-third of the federal ambient air quality
9 standard in this area?

10 MS. HALE: I'm not aware of that.
11 Perhaps our air quality witness is.

12 MR. SARVEY: Okay. In your action plan
13 you've asked ISO to release the Potrero 3 unit
14 when the SFERP comes online, is that true?

15 MS. HALE: The ISO action plan indicates
16 that it will release RMR, yes.

17 MR. SARVEY: Okay. And you're aware
18 that the SFERP emits almost twice as much PM2.5
19 per megawatt than the Potrero 3 according to your
20 testimony on that page 3-7, table 3-4?

21 MS. HALE: So you're directing me to
22 table 3-4?

23 MR. SARVEY: Table 3-4.

24 MS. HALE: And the PM10?

25 MR. SARVEY: The PM2.5.

1 MS. HALE: I don't see PM10 -- I'm
2 sorry, I don't see PM2.5 listed on table 3-4.

3 MR. SARVEY: Okay. So you're aware that
4 the SFERP emits almost twice as much PM10 per
5 megawatt as the Potrero 3 unit that you're
6 proposing to replace with the SFERP?

7 MS. HALE: Could you tell me the
8 percentage you're citing, again, please?

9 MR. SARVEY: The SFERP produces almost
10 twice as much PM10 per megawatt hour than the
11 Potrero 3, the project that you propose to replace
12 it with.

13 MS. HALE: The PM10 emissions per
14 megawatt hour for our project are higher than
15 those for the Potrero unit 3 and for Hunter's
16 Point unit 4. This is a reflection of the fact
17 that the emission rate for Potrero 3 and Hunter's
18 Point 4 is their average emission rate.

19 While the value for our project is the
20 proposed permit limit, which is the maximum
21 allowable level at anytime under any condition.

22 It's likely under actual operating
23 conditions that our project will emit
24 significantly less PM10 per megawatt hour than
25 either Potrero 3 or Hunter's Point 4.

1 MR. SARVEY: And do you have any history
2 of the emissions from an LM Sprint 6000 to back
3 that up?

4 MS. HALE: I don't, personally. Perhaps
5 our air quality witness does.

6 MR. SARVEY: I've submitted some as an
7 exhibit under air quality, but how do we deal with
8 that, Your Honor?

9 HEARING OFFICER FAY: Well, I think you
10 may want to make a note to yourself and ask Mr.
11 Rubenstein that question when we take up air
12 quality.

13 MR. SARVEY: Okay.

14 BY MR. SARVEY:

15 Q So you're also aware that the PM10 is
16 the only pollutant that is predicted to impact the
17 local community, not the NO2?

18 MS. SOL : Mr. Sarvey, could you point
19 us to where in the testimony that question comes
20 from?

21 MR. SARVEY: It came in earlier under
22 question two that I asked, or excuse me, question
23 three that I asked on page 1-5 of exhibit 15. It
24 states the applicant believes there will be PM10
25 impacts to both Potrero and Bay View Hunter's

1 Point neighborhood. She answered, correct.

2 I guess a better question, or to
3 rephrase it, do you believe that there's NO2
4 impacts to these neighborhoods that will
5 facilitate environmental justice by the siting of
6 the SFERP?

7 MS. HALE: I was trying to locate in our
8 testimony where we address our NOx offsets, but
9 our NOx offsets mitigate the impacts of NOx. I'm
10 sorry I can't refer you to the specific area where
11 that's covered in the testimony.

12 MR. SARVEY: Okay, well, we'll get to
13 that in air quality later.

14 On page 3-8 of exhibit 15.

15 MS. HALE: Yes.

16 MR. SARVEY: Your testimony on page 3-8
17 of exhibit 15 states that the SFERP will improve
18 reliability in San Francisco. Can you identify
19 any major outages that occurred in San Francisco
20 due to the failure of the Potrero 3 unit?

21 MS. HALE: Not as I sit here, no.

22 MR. SARVEY: Okay, thank you. Does the
23 City intend to operate the SFERP for any other
24 reason than reliability? Will it sell power for
25 profit from this project?

1 MS. HALE: Under the power purchase
2 agreement we have with DWR we'll be operating the
3 project to preserve reliability and we will be
4 selling the power at cost.

5 MR. SARVEY: And after that term
6 expires, after ten years, does the City have any
7 intention to sell electricity for profit?

8 MS. HALE: The City has not determined
9 the use of the facility after the expiration of
10 the contract.

11 MR. SARVEY: On page 3-6 of your
12 testimony you talk about the action plan for San
13 Francisco.

14 MS. HALE: Yes.

15 MR. SARVEY: And can you illuminate the
16 risk that Cal-ISO has explained to you are
17 inherent in your action plan?

18 MS. HALE: I'm not sure what you're
19 referring to when you say risks. Could you be
20 more specific, please, Mr. Sarvey?

21 HEARING OFFICER FAY: Keep in mind we
22 will have a witness from the ISO available.

23 MR. SARVEY: Okay.

24 HEARING OFFICER FAY: While the witness
25 will be testifying on local system effects, I

1 think it would be appropriate if you still have
2 this question, or any others on direct to
3 something published by the ISO, to raise it at
4 that time with that witness.

5 MR. SARVEY: Okay, well, I just want to
6 raise a couple questions with the City on the
7 issue.

8 BY MR. SARVEY:

9 Q Your action plan makes the City more
10 reliant on imported generation, doesn't it?

11 MS. SOL : Your Honor, objection. It is
12 not the City's action plan.

13 MR. SARVEY: Okay.

14 BY MR. SARVEY:

15 Q The Cal-ISO plan makes the City more
16 reliant on imported generation, doesn't it?

17 MS. HALE: The action plan lays out the
18 additional transmission and generation necessary
19 to preserve reliability in San Francisco. It's a
20 combination of both generation and transmission
21 improvements.

22 Will list relative to what? More
23 reliant relative to what, please?

24 MR. SARVEY: The current situation.

25 MS. HALE: Well, given the reliability

1 of the aged power plants that currently are in San
2 Francisco, I'd have to say no. But, again, it's
3 the Cal-ISO that has identified -- is responsible
4 for reliability assessment, and has identified the
5 infrastructure and improvements necessary to
6 preserve reliability.

7 I understand that to be a combination of
8 both generation and transmission. And in their
9 action plan I understand them to be comfortable
10 that reliability is preserved and not diminished.

11 MR. SARVEY: I want to call your
12 attention to a Cal-ISO letter attachment 3 to the
13 City, dated October 27, 2004. I don't know where
14 you have that as listed as an exhibit.

15 MS. HALE: If we may have a moment to
16 find the document, please.

17 MS. SOL : Mr. Sarvey, just so that
18 we're clear, are you referring to the California
19 Action Plan? I think it was provided as a
20 response to CARE 3.

21 MR. SARVEY: I think it's in several
22 places, actually.

23 MS. SOL : Yeah.

24 MR. SARVEY: I think it's actually in
25 the exhibit, or the staff's testimony, as well.

1 MS. SOL : Okay. Why don't we find an
2 exhibit so we can all be looking at the same
3 document.

4 HEARING OFFICER FAY: Can you give us a
5 reference, Mr. Sarvey, where this is found?

6 MR. SARVEY: I'm looking for it right
7 now in staff's testimony.

8 (Pause.)

9 MR. SARVEY: It's in staff's testimony;
10 it's listed as attachment 3 under alternative 6-
11 133. It's not numbered as far as a page. But if
12 you look in staff's testimony 6-133. It was also
13 included in Mr. Boyd's data response, as well, but
14 I don't know what that exhibit is.

15 MS. SOL : It's included as a response,
16 the June 9, 2005, response to the CARE data
17 request set three. I just don't have here the
18 exhibit number. Ah, it's exhibit 25.

19 HEARING OFFICER FAY: And do you have a
20 question before the witness now?

21 MR. SARVEY: Yeah, if she's ready.

22 In attachment 3 it discussed the risks
23 of the project. And I want to read from you the
24 part right after, the following are items to
25 consider in assessing the level of acceptable

1 risk.

2 MS. HALE: I'm sorry, Mr. Sarvey, you're
3 referring me to exhibit 25? Or to a portion of
4 the testimony?

5 MR. SARVEY: I'm referring you to the
6 Cal-ISO letter, and it's dated June 8, 2005 if
7 this is correct. Update action plan for San
8 Francisco.

9 MS. HALE: I have a letter dated October
10 27th of '04. So, I apparently don't have the
11 right --

12 MR. SARVEY: Okay, that's fine, that'll
13 work just as well. It's the same information.
14 October 27, 2004, there's an attachment 3 there?

15 MS. HALE: Yes, I have that before me.

16 MR. SARVEY: Okay, I want to read to you
17 from that. Right after it says, the following are
18 items to consider in assessing the level of
19 acceptable risk.

20 MS. HALE: Yes.

21 MR. SARVEY: The original design and
22 subsequent configuration of the power system in
23 San Francisco was based on more local generation
24 versus imported generation. The action plan moves
25 away from the original design in the area and

1 therefore creates greater dependency on imported
2 energy.

3 Do you agree or disagree with that?

4 MS. HALE: It's the ISO's statement.
5 I'm comfortable with that statement.

6 MR. SARVEY: Okay. And then the second
7 part says, the reality of all generation is that
8 at one point or another all units will trip
9 offline or break down. Again, without having more
10 local generation immediately available, dependency
11 on imports is increased.

12 MR. RATLIFF: Could I raise a point of
13 order, Mr. Fay?

14 HEARING OFFICER FAY: Mr. Ratliff.

15 MR. RATLIFF: As I understand it, the
16 topic that we're doing here is the introduction,
17 project description and purpose of the project. I
18 suppose it's possible that we would do all of the
19 issues under that, but we will never finish if we
20 do.

21 My suggestion is that we do air quality
22 under the air quality topic; and that we do
23 project reliability under the project reliability
24 topic, the subject which is actually scheduled for
25 today, if we get to it, where I think these

1 questions would be much more in order.

2 HEARING OFFICER FAY: Do you see this
3 line of questioning as more appropriate under
4 local system effects, since it deals with the
5 ISO's interpretation of San Francisco's need? Mr.
6 Ratliff?

7 MR. RATLIFF: Well, my point is that we
8 can do every topic that is scheduled for
9 adjudication under the introduction if we choose
10 to, but it's not really a profitable way to do it
11 because the witnesses who have testified on those
12 points will be available later. And presumably
13 will be asked the same questions again.

14 So, rather than doing it twice, and
15 trying to do it all under introduction, I would
16 propose that we have the witnesses who area
17 actually going to testify on those points be the
18 witnesses that answer these questions.

19 HEARING OFFICER FAY: Sure. I
20 recognize, Mr. Sarvey, it's not a bright line.
21 However, as I mentioned, if what you are trying to
22 elicit is whether or not the ISO actually said
23 that, and get that into the record, maybe you want
24 to ask the ISO's representative.

25 MR. SARVEY: Well, what I'm -- their

1 testimony on page 3 states that the SFERP will
2 improve reliability. And basically I'm just
3 pointing out to them that it doesn't improve
4 reliability. And that's the basis of --

5 HEARING OFFICER FAY: Okay, but we're
6 not on reliability.

7 MR. SARVEY: -- my questions. Well,
8 that's their --

9 HEARING OFFICER FAY: And Mr. Ratliff's
10 point is well taken that reliability should be
11 brought up while we're on that topic.

12 MR. SARVEY: Well, that's their
13 testimony in purpose and needs, so I'm just trying
14 to deal with their testimony on purpose and need.
15 I don't have much more time to go, maybe two more
16 questions.

17 HEARING OFFICER FAY: Okay, go ahead.

18 MR. SARVEY: I'll skip these questions,
19 we'll deal with these later. These are related to
20 reliability, as well, so I'll wait till
21 reliability to ask these questions. Thank you.

22 HEARING OFFICER FAY: Okay, nothing
23 further then?

24 MR. SARVEY: Nothing further, no.

25 HEARING OFFICER FAY: Okay. Let's move

1 to the staff.

2 MR. RATLIFF: The staff witness is Bill
3 Pfanner.

4 Mr. Pfanner, did you --

5 HEARING OFFICER FAY: Please, --

6 MR. RATLIFF: Oh, I'm sorry, --

7 HEARING OFFICER FAY: -- Mr. Pfanner
8 needs to be sworn.

9 MR. RATLIFF: -- he needs to be sworn,
10 yes.

11 HEARING OFFICER FAY: Please stand.
12 Whereupon,

13 WILLIAM PFANNER
14 was called as a witness herein, and after first
15 having been duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. RATLIFF:

19 Q Mr. Pfanner, did you prepare the
20 portions of the staff FSA which I believe is
21 exhibit 47?

22 A Yes, I did.

23 Q Which are described as project
24 description?

25 A Yes.

1 Q And introduction, I believe?

2 A Yes.

3 Q Do you have any changes to make in that
4 testimony at this time?

5 A I do not.

6 Q Is the testimony correct and true to the
7 best of your knowledge and belief?

8 A Yes, it is.

9 Q Could you summarize that testimony very
10 briefly?

11 A Basically that the AFC submitted by the
12 applicant was for a 145 megawatt simple cycle
13 plant using three natural gas-fired generators,
14 located on a four-acre parcel owned by the City
15 and County of San Francisco south of 25th Street,
16 and approximately 900 feet east of Illinois Street
17 in San Francisco.

18 Q Does that complete your summary?

19 A That does.

20 Q One additional question. I noticed that
21 your testimony does not include a fourth turbine,
22 which I understand would be located at the airport
23 and is part of the San Francisco action project
24 description, is that correct?

25 A That is correct. Thank you. Yes, that

1 was not part of the application. It was
2 identified in the applicant's AFC, but it was not
3 part of this application.

4 Q And it is not part of this application
5 for what reason?

6 A Because the City had a specific project,
7 given the size, given their needs, and that is how
8 the AFC was submitted to us.

9 Q Is it because the project is not large
10 enough to invoke the Energy Commission's
11 jurisdiction?

12 A That is correct. The Energy Commission
13 takes projects 50 megawatt or greater, and the San
14 Francisco Airport project is smaller than that.
15 So it would not be under our jurisdiction.

16 MR. RATLIFF: The witness is available
17 for cross-examination.

18 HEARING OFFICER FAY: Would you like to
19 move that exhibit first?

20 MR. RATLIFF: Would you prefer that we
21 move the entire FSA, or his portion thereof, or --

22 HEARING OFFICER FAY: If there's no
23 objection you could move the entire thing at this
24 time.

25 MR. RATLIFF: Okay, the staff would move

1 then that the staff FSA be introduced into -- as
2 marked as exhibit 47 be moved into testimony now
3 at this time.

4 HEARING OFFICER FAY: Is there
5 objection? All right, hearing none, so moved.

6 And Mr. Pfanner is available for cross-
7 examination. Ms. Sol,.

8 MS. SOL : I have one question based on
9 the additional information just submitted.

10 CROSS-EXAMINATION

11 BY MS. SOL :

12 Q Are you aware, Mr. Pfanner, of the
13 distance generally between the Airport and the
14 SFERP?

15 A It's some miles; they're not in close
16 proximity to each other.

17 MS. SOL : Thank you, Mr. Pfanner.

18 HEARING OFFICER FAY: Anything further,
19 then?

20 MS. SOL : No, Your Honor.

21 HEARING OFFICER FAY: Mr. Sarvey.

22 MR. SARVEY: No questions.

23 HEARING OFFICER FAY: No questions,
24 okay. Thank you, Mr. Pfanner.

25 Now we'll move to Mr. Sarvey. Mr.

1 Sarvey, please state your name and stand and be
2 sworn.

3 MR. SARVEY: Robert Sarvey.
4 Whereupon,

5 ROBERT SARVEY
6 was called as a witness herein, and after first
7 having been duly sworn, testified as follows:

8 DIRECT TESTIMONY
9 MR. SARVEY: Well, the basis of my
10 testimony is that the applicant testifies on 3-10
11 of the exhibit 15 that the San Francisco Electric
12 Reliability project will support affordable
13 electric bills.

14 And basically this project is a DWR
15 project. And regardless of whether this project
16 runs or not, the applicant is going to be
17 receiving a capacity payment. And there's certain
18 projects already under DWR that are getting as
19 much as \$4900 a megawatt to sit and wait for their
20 call.

21 I believe there's already resources in
22 San Francisco that -- and other resources that are
23 being proposed that are much much cheaper, a
24 better fit at least cost.

25 And the basis of my testimony is that

1 this will not be a cheap project for the
2 ratepayers, particularly the low income ratepayers
3 with the DWR charges on their electric bill.

4 And this is supposed to be a competitive
5 market, but this is the last of the infamous DWR
6 contracts, is not affordable.

7 That would summarize my testimony.

8 HEARING OFFICER FAY: Okay. And would
9 you like to move your testimony at this time?

10 MR. SARVEY: I would like to move my
11 testimony. I'd also like to move a couple of
12 exhibits that the applicant has not spelled out
13 that were data responses to Community Power.

14 HEARING OFFICER FAY: All right, let me
15 first get your testimony, which is identified on
16 the exhibit list as exhibit 76. is there
17 objection to receiving that? Okay, so moved.

18 And what else did you have in mind?

19 MR. SARVEY: The applicant, in
20 responding to Community Power, provided some
21 documents that basically support my testimony.
22 And they're probably already admitted, but I just
23 want to make sure that they are.

24 Because the way the exhibits from San
25 Francisco Power have been handled, I must say I

1 don't know what's in the record and what's not in
2 the record. So I want to make sure that these two
3 documents are clearly in the record.

4 HEARING OFFICER FAY: Okay, can you
5 identify the documents and how you received them?

6 MR. SARVEY: I received the documents
7 from the applicant. One is HMM Energy Resources,
8 Inc. It's dated July 30, 2003. It's called,
9 comments on DWR's revised analysis. I have copies
10 if anybody needs one.

11 And then the other item is received from
12 the applicant in response to Community Power and
13 it's the City of San Francisco Public Utilities
14 Commission assessment of Northern California power
15 market and the competitive position of four new
16 generating facilities in San Francisco.

17 And I'm assuming they're already in the
18 record, but I made copies of them just in case.

19 MS. SOL : They're not already in the
20 record.

21 HEARING OFFICER FAY: They're not?

22 MS. SOL : No.

23 HEARING OFFICER FAY: All right. Can
24 you provide us and all the other parties with
25 copies?

1 MR. SARVEY: Yes.

2 (Pause.)

3 HEARING OFFICER FAY: All right, we will
4 mark these for exhibit, the single sheet
5 identified as -- single, double-sided sheet
6 identified at the top as comments on DWR's revised
7 analysis will be exhibit 81.

8 And the second exhibit that looks like a
9 PowerPoint presentation; it's perhaps 20 pages
10 long. First box is City of San Francisco Public
11 Utilities Commission assessment of Northern
12 California power market and the competitive
13 position of four new generating facilities in San
14 Francisco City. That will be identified as
15 exhibit 82.

16 MS. SOL : Your Honor, if I could just
17 have a minute to locate that in my documents?

18 HEARING OFFICER FAY: Okay.

19 (Pause.)

20 MS. SOL : Mr. Sarvey, you don't happen
21 to know the date on which that was provided?

22 MR. SARVEY: I just got a big box, so --
23 several times. So I would like to say I could,
24 but I can't, I'm sorry.

25 MS. SOL : I have a big box here.

1 MR. SARVEY: Yeah, I know.

2 MR. RATLIFF: It appears to be dated
3 June 11, 2004.

4 (Pause.)

5 MS. SOL : I'm ready to proceed.

6 HEARING OFFICER FAY: All right. And,
7 Mr. Sarvey, you wanted to have these admitted into
8 the record?

9 MR. SARVEY: Yes, please.

10 HEARING OFFICER FAY: And for what
11 purpose?

12 MR. SARVEY: They support my testimony
13 and are the applicant's documents. I assumed they
14 were in the record, but to be sure that they are
15 that's why I brought copies.

16 HEARING OFFICER FAY: Okay. Is there
17 objection?

18 MS. SOL : No.

19 MR. RATLIFF: No.

20 HEARING OFFICER FAY: All right, those
21 will be admitted.

22 Okay, anything further, Mr. Sarvey?

23 MR. SARVEY: No. I'm available --

24 HEARING OFFICER FAY: And Mr. Sarvey's
25 available for cross-examination. Any questions

1 from the applicant?

2 CROSS-EXAMINATION

3 BY MS. SOL :

4 Q First question, Mr. Sarvey, are you a
5 transmission planner?

6 A No, I'm not.

7 Q The second thing, Mr. Sarvey, you
8 mentioned that you received these documents in
9 response to a data request by San Francisco
10 Community Power.

11 A That's correct.

12 Q Are you aware that -- of the City's
13 statement as to the documents at the time that it
14 provided the --

15 A Pardon me, could you restate that,
16 please?

17 Q Okay. Are you aware that in providing
18 these documents the City, in its data response
19 stated, the documents provided with these
20 responses are in the City's possession and reflect
21 analysis of different siting options. These
22 documents were found in the files of various City
23 Staff and are provided for completeness, even
24 though most were not presented to or considered by
25 higher level policymakers in the context of final

1 determinations on the proposed location to be
2 filed with the CEC?

3 There's, in addition, a statement, the
4 documents were provided with these responses, are
5 in the City's possession and reflect operational
6 scenarios, analyses and associated workpapers, as
7 well as the resulting emission impacts, these
8 documents were found in the files of various City
9 Staff and are provided for completeness.

10 While the documents may reflect
11 particular scenarios about CT running hours
12 developed by or for City Staff at different times,
13 they do not reflect a City position on expected CT
14 running hours, as no such position exists at this
15 time beyond the request for permitting for 12,000
16 hours.

17 There are various and sundry statements
18 in the City's response, are there not, qualifying
19 the validity of these documents?

20 MR. SARVEY: I believe counsel's
21 testifying. I'm going to object.

22 HEARING OFFICER FAY: She asked a
23 question. I think it's a reasonable question.

24 MR. SARVEY: I got lost. Give me --

25 HEARING OFFICER FAY: Overruled.

1 MR. SARVEY: -- a synopsis for me. What
2 is the question, again? I'm sorry.

3 MS. SOL : Okay, perhaps what we can do,
4 I don't know if the entire response to SF's CP set
5 1 has been admitted. But, if not, I'd like to
6 move to admit it.

7 BY MS. SOL :

8 Q And, Mr. Sarvey, we can read what it
9 says together and you can tell me whether it says
10 what it says.

11 Do you have a copy of the City's
12 responses to San Francisco Community Power dated
13 August 18, 2004?

14 A I believe these were from September 24,
15 2004, but let me --

16 HEARING OFFICER FAY: Counsel, are those
17 responses in the record?

18 MS. SOL : I don't believe that all of
19 them are.

20 MR. SARVEY: I don't have a copy of
21 the -- what you're citing there. I have, I
22 believe that these were in response to data
23 requests 1 and 3 dated September 24, 2004.

24 BY MS. SOL :

25 Q Those responses were further responses

1 to questions that were made initially and
2 responded to initially on April 18 -- sorry,
3 August 18th, is that not correct?

4 A It's not clear to me that they are, but,
5 go ahead.

6 Q All right, let's turn to those
7 responses.

8 (Pause.)

9 HEARING OFFICER FAY: Do you have a copy
10 of that in front of you, Mr. Sarvey? Of the
11 responses?

12 MR. SARVEY: Of the two responses I
13 submitted? I have the one page, but the --

14 HEARING OFFICER FAY: The qualifying
15 statements that Ms. Sol, --

16 MR. SARVEY: No, like I said, but she
17 can read them to me, I'll --

18 HEARING OFFICER FAY: Okay.

19 MR. SARVEY: -- I'll try to -- now that
20 I know where she's going maybe I can understand
21 what she's asking me.

22 MS. SOL : All right.

23 HEARING OFFICER FAY: Okay, where are
24 these found, Ms. Sol,?

25 MS. SOL : These responses are found in

1 response to data requests 1 and 3 that were
2 provided to San Francisco Power on August 18,
3 2004, as an initial response to data set to San
4 Francisco Power's data requests 1 and 3.

5 HEARING OFFICER FAY: Go ahead.

6 MS. SOL : Okay.

7 Well, I guess maybe to shorten this, if
8 I could just introduce those responses into the
9 record, or I can have Mr. Sarvey read them.

10 HEARING OFFICER FAY: Mr. Sarvey, would
11 you object to having them introduced?

12 MR. SARVEY: No, no objection.

13 HEARING OFFICER FAY: All right, why
14 don't you introduce them, Ms. Sol,.

15 MS. SOL : Okay. So I would like to
16 introduce for the record the City's responses to
17 the San Francisco Community Power set 1, data
18 requests 1 and 3. And the date of that submittal
19 is August 18, 2004.

20 HEARING OFFICER FAY: Okay, that will be
21 exhibit 83. Can you provide us a copy?

22 (Pause.)

23 HEARING OFFICER FAY: And for reference,
24 where is the qualifying language found that you
25 were reading?

1 MS. SOL : It is found in the response
2 to data requests 1 and 3. As to data request 1,
3 it's the second paragraph to the response. As to
4 data request 3, it's the third paragraph to the
5 response.

6 HEARING OFFICER FAY: Thank you. And
7 you're moving this?

8 MS. SOL : I am, Your Honor.

9 HEARING OFFICER FAY: All right. Any
10 objection to receiving this into the record?

11 MR. SARVEY: No.

12 HEARING OFFICER FAY: It is in the
13 administrative record.

14 MR. SARVEY: It's in the record already,
15 yeah.

16 HEARING OFFICER FAY: Into the hearing
17 record?

18 MR. SARVEY: It's already in the record,
19 I believe, but I believe she's quoting the wrong
20 date, but that's okay.

21 HEARING OFFICER FAY: Well, the date we
22 have on this document is August 18, 2004.

23 MR. SARVEY: Yeah. Mine's September 24,
24 2004.

25 HEARING OFFICER FAY: Well, Ms. Sol, is

1 moving -- this is what you read, is it not, Ms.
2 Sol,?

3 MS. SOL : That's correct.

4 HEARING OFFICER FAY: Okay. Then any
5 objection to making this --

6 MR. SARVEY: No objection.

7 HEARING OFFICER FAY: -- exhibit 83?
8 Okay. Admitted.

9 All right, can we just leave it in as it
10 is, let it speak for itself? Or did you want to
11 pursue this further?

12 MS. SOL : No, I'm happy to have it
13 speak for itself.

14 HEARING OFFICER FAY: Okay. Any further
15 questions of Mr. Sarvey?

16 MS. SOL : Your Honor, I have no further
17 questions for the witness.

18 HEARING OFFICER FAY: Okay. Mr.
19 Ratliff?

20 MR. RATLIFF: No.

21 HEARING OFFICER FAY: No questions. All
22 right. Thank you, Mr. Sarvey, you're excused.

23 All right, we're going to move to the
24 topic of general conditions. And I assume this
25 would be done by declaration but for the

1 clarification regarding security. And, Ms. Sol,,
2 can you address that for us?

3 MS. SOL : I believe the only
4 clarification to be made was going to be made in
5 the hazardous materials section.

6 HEARING OFFICER FAY: Okay, can you just
7 briefly describe it?

8 MS. SOL : There was going to be a
9 clarification that instead of requiring 24-hour
10 staffing of the plant, there would be 24-hour
11 staffing of a surveillance camera of the plant.
12 And I believe that staff was going to propose some
13 language in that regard.

14 HEARING OFFICER FAY: Okay. Does the
15 applicant have any testimony in this area to
16 introduce?

17 MS. SOL : No, our testimony in this
18 area is all covered in the testimony that has
19 already been admitted.

20 HEARING OFFICER FAY: Okay. We'll move
21 to the staff.

22 MR. RATLIFF: The staff's is in the FSA.
23 And I think this is to be submitted by
24 declaration, is that correct?

25 HEARING OFFICER FAY: Yes, that was the

1 plan.

2 Okay, and is staff satisfied with the
3 clarification regarding security --

4 MR. RATLIFF: Yes. When the staff
5 witness for hazardous waste -- is it hazardous
6 waste --

7 UNIDENTIFIED SPEAKER: Hazardous
8 materials.

9 MR. RATLIFF: -- hazardous materials
10 testifies, he will offer the language that Ms.
11 Sol, referred to, which would provide for camera
12 surveillance rather than, I think, live guards --

13 HEARING OFFICER FAY: And so, you wanted
14 to introduce Mr. Meyer's declaration in lieu of --

15 MR. RATLIFF: Yes, please.

16 HEARING OFFICER FAY: -- him testifying?
17 All right. Any objection to receiving that?

18 Mr. Sarvey, you're down for cross-
19 examination. Is this something that -- was it
20 regarding the security?

21 MR. SARVEY: Yeah, it was this proposed
22 condition. I haven't even seen the condition,
23 so --

24 HEARING OFFICER FAY: All right, so --

25 MR. SARVEY: -- I'd like to see it, if I

1 could.

2 HEARING OFFICER FAY: -- can you address
3 that when it's brought to our attention under
4 hazardous materials?

5 MR. RATLIFF: Yes.

6 HEARING OFFICER FAY: Mr. Sarvey, is
7 that satisfactory to you?

8 MR. SARVEY: I thought we were going to
9 deal with this condition under general conditions
10 and the 24-hour security guard. That's what I
11 thought we were talking about. This is why I
12 proposed this --

13 HEARING OFFICER FAY: Right, that's why
14 you wanted to cross. Apparently it's going to
15 come up under hazardous materials. So it's just a
16 little later today.

17 MR. SARVEY: Okay, thank you.

18 HEARING OFFICER FAY: All right. Good.
19 Nothing further, then, on general conditions.

20 Facility design. Does the applicant
21 have testimony on that?

22 MS. SOL : That testimony is covered
23 within the testimony that's already been admitted.

24 HEARING OFFICER FAY: Okay. And the
25 staff?

1 MR. RATLIFF: We propose that that be
2 submitted by declaration.

3 HEARING OFFICER FAY: Okay. And your
4 witness on that?

5 MR. RATLIFF: Facility design, I believe
6 it was Steve Baker.

7 HEARING OFFICER FAY: Okay. All right,
8 we'll receive that portion of exhibit 46 by Baker
9 and Company. And we have their declarations.

10 Moving on, transmission line safety and
11 nuisance. Again, to be received by declaration.
12 Ms. Sol,?

13 MS. SOL : Yes, Your Honor. That
14 testimony is under electric transmission. The
15 witnesses are Mr. Steve Brock and Mr. Barry Flynn.
16 The exhibits adopted by Mr. Brock and Mr. Flynn
17 are listed under electric transmission. They
18 include the application for certification for the
19 San Francisco Electric Reliability project dated
20 March 2004, volume 2, appendix 5, which is exhibit
21 1.

22 A supplement in response to data
23 adequacy comments on the application for
24 certification for the SFERP questions on
25 transmission system engineering dated April 16,

1 2004, exhibit 2.

2 Supplement A to the application for
3 certification -- and I apologize, these are all
4 partial components of those exhibits -- supplement
5 A to the application for certification for the San
6 Francisco Electric Reliability project, volume 1,
7 dated March 2004, March 24, 2005, section 5,
8 electric transmission; that's exhibit 15.

9 Applicant's response to CEC Staff
10 requests, data response set 1A, responses to data
11 requests 70 through 79, dated July 6, 2004; that's
12 exhibit 3.

13 Applicant's response to the CEC Staff
14 data request, informal data response set 3,
15 response to data request 146, dated August 20,
16 2004, exhibit 9.

17 Applicant's response to CEC Staff data
18 request, data response set 3A, final responses to
19 data requests 182 through 183, dated June 3, 2005,
20 exhibit 19.

21 Applicant's response to CEC Staff data
22 request, data response set 3B, response to data
23 request 182, dated June 22, 2005, exhibit 20.

24 Applicant's response to CEC Staff data
25 request, data response set 3C, response to data

1 request 183, dated July 19, 2005, exhibit 21.

2 And applicant's comments on the
3 preliminary staff assessment set 1, comments 63
4 and 83, dated October 12, 2005, exhibit 39.

5 I move to have those introduced by
6 declaration.

7 HEARING OFFICER FAY: Is there
8 objection? Okay, I hear none. So moved. That
9 will be entered into the record at this time.

10 And we move to the staff.

11 MR. RATLIFF: The staff testimony was
12 from Dr. Obed Odoemelum and to be submitted by
13 declaration as part of the FSA.

14 HEARING OFFICER FAY: Objection?
15 Hearing none, so moved.

16 Ms. Sol,, did your recitation include
17 the topic of transmission system engineering, as
18 well?

19 MS. SOL : Yes, it did.

20 HEARING OFFICER FAY: Okay, so I assume
21 we've addressed all your testimony on that.

22 Mr. Ratliff, transmission system
23 engineering?

24 MR. RATLIFF: The staff testimony, the
25 witness was Mark Hesters, submitted by declaration

1 as part of the FSA.

2 HEARING OFFICER FAY: Objection to
3 receiving that into the record, as if read?
4 Hearing none, so moved.

5 And I note that no other party indicated
6 the need for a witness or the desire to cross-
7 examine on those topics.

8 Visual resources. Ms. Sol,.

9 MS. SOL : Your Honor, that is in the
10 visual resource section of our testimony.

11 HEARING OFFICER FAY: What page is that?

12 MS. SOL : Let me get -- it's on page
13 30. The witnesses are Ms. Wendy Hayden, Dr. Tom
14 Priestley and Mr. Gary Rubenstein. The exhibits
15 are as listed in our testimony. They're portions
16 of exhibit 3, exhibit 7, exhibit 15 and exhibit
17 19, exhibit 39 and exhibit 16. They're all
18 specifically identified in our visual resources
19 testimony.

20 And we move to have those introduced by
21 declaration.

22 HEARING OFFICER FAY: Any objection?
23 Hearing none, so moved.

24 And we'll go to the staff. Visual
25 resources.

1 MR. RATLIFF: The expert witness was
2 Mark Hamblin; submit by declaration.

3 HEARING OFFICER FAY: Objection to
4 receiving that? Hearing none, so moved.

5 The topic next is noise and vibration.
6 And this may be received by declaration if there
7 was a concurrence among the parties. And that had
8 not yet taken place, so bring us up to date, Ms.
9 Sol,.

10 MS. SOL : I believe a clarification was
11 going to be made when staff introduced their
12 testimony that would address our concern.

13 HEARING OFFICER FAY: And do you believe
14 that's resolved the dispute?

15 MR. RATLIFF: Mr. Fay, if I may. I
16 think that the -- if I understand what
17 clarification Ms. Sol, is referring to is, I think
18 that in terms of noise complaints, I think that
19 there was a provision and a verification that
20 provided for 15 days. And the applicant requested
21 that it be 15 working days. And staff does not
22 agree to that change.

23 So we don't propose to make that change.
24 So my understanding is we're still submitting it
25 by declaration, but I suppose that still -- that

1 may be up to the applicant.

2 MS. SOL : Actually, I stand corrected.
3 Apparently my staff spoke to CEC Staff and we're
4 going to accept the condition of certification as
5 listed in the final staff assessment. I
6 apologize.

7 HEARING OFFICER FAY: Okay, and what
8 condition of certification is that?

9 MS. SOL : That's noise-4.

10 HEARING OFFICER FAY: I'm sorry?

11 MS. SOL : Noise-4, the verification
12 section.

13 HEARING OFFICER FAY: So, noise-4
14 verification will remain, merely the statement of
15 15 days.

16 MS. SOL : That's correct.

17 HEARING OFFICER FAY: All right, and
18 applicant agrees to that, is that correct?

19 MS. SOL : Yes.

20 HEARING OFFICER FAY: All right, with
21 that understanding, do you want to move your
22 testimony on noise?

23 MS. SOL : I do, Your Honor. Noise and
24 vibration, the page number, for some reason, isn't
25 there. But the second page is page 22. The

1 witness is Mark Bastasch. There are eight
2 documents or portions of documents that are listed
3 there that are our testimony as to this matter.

4 Portions of exhibit 9, exhibit 10,
5 exhibit 15, exhibit 19, exhibit 25, exhibit 39,
6 exhibit 16 and exhibit 45. And I move to have
7 those introduced by declaration.

8 HEARING OFFICER FAY: Any objection?
9 Hearing none, so moved.

10 And, Mr. Ratliff, we'll go to you.

11 MR. RATLIFF: The staff testimony was
12 prepared by Steve Baker; we submit it by
13 declaration.

14 HEARING OFFICER FAY: Any objection to
15 receiving Mr. Baker's testimony on declaration?
16 Hearing none, so moved. We receive Mr. Baker's
17 testimony on noise and vibration. And we have no
18 other testimony on that topic.

19 Moving now to power plant efficiency.
20 Ms. Sol,.

21 MS. SOL : Your Honor, the testimony,
22 the City's testimony on that topic is included in
23 the testimony that's already been submitted. In
24 particular, the testimony on project description,
25 engineering and natural gas supply.

1 HEARING OFFICER FAY: All right, and
2 those witnesses are still available for cross-
3 examination, is that correct?

4 MS. SOL : Yes, they are.

5 HEARING OFFICER FAY: Okay.

6 MS. SOL : the witnesses, it states here
7 that it's Mr. Brock and Ms. Kubick. I should note
8 that those sections are also sponsored by Mr.
9 DeYoung.

10 HEARING OFFICER FAY: All right. If you
11 can make them available as a panel, that would be
12 helpful.

13 Do you have questions of this panel, Mr.
14 Sarvey, on efficiency?

15 MR. SARVEY: Yes, I do.

16 HEARING OFFICER FAY: Okay.

17 MS. SOL : Okay.

18 HEARING OFFICER FAY: I think it would
19 be most efficient for you to just pose your
20 question and let the panel decide who's best able
21 to answer it.

22 MR. SARVEY: Sure. Are we ready?

23 Whereupon,

24 STEVEN BROCK, KAREN KUBICK and STEVEN DeYOUNG
25 were recalled as witnesses herein, and having been

1 previously duly sworn, were examined and testified
2 further as follows:

3 CROSS-EXAMINATION

4 BY MR. SARVEY:

5 Q Originally the City had a plan for a
6 cogeneration facility at Jesse Street, isn't that
7 correct?

8 MR. BROCK: Can you refer me to the
9 testimony that states that?

10 MR. SARVEY: I can refer you to the
11 exhibits, but it's not in the testimony. What is
12 the estimated fuel savings from siting one or more
13 of these projects in combined cycle or
14 cogeneration?

15 MR. BROCK: Can you refer me to where we
16 addressed that, specifically?

17 MR. SARVEY: We're talking about power
18 plant efficiency, aren't we?

19 MR. BROCK: Yeah.

20 MR. SARVEY: Okay. You don't state it
21 anywhere. I'm asking you, as an expert, what is
22 the estimated fuel savings from siting one or more
23 of these projects in combined cycle or
24 cogeneration, in your expert opinion.

25 MR. BROCK: You'd have to be more

1 specific, and I have to address that clearly a
2 combined cycle is, when it is operating, more
3 efficient than a simple cycle plant. But without
4 looking at the number of hours and the other
5 aspects of the project, I can't give you a
6 definitive answer.

7 MR. SARVEY: Okay. Would the project be
8 more competitive than the electricity market if
9 one or more of the turbines were in combined
10 cycle?

11 MR. BROCK: I can't answer that unless
12 you specify when you talk about competitive
13 whether you're talking about the cost to build,
14 the number of hours that you would expect to
15 operate, and under what conditions you would
16 expect to dispatch.

17 MR. SARVEY: Okay, I'm through.

18 HEARING OFFICER FAY: Is that it?
19 Nothing further of the panel?

20 MR. SARVEY: That's all I have for the
21 panel.

22 HEARING OFFICER FAY: Okay. All right,
23 thank you. And, Ms. Sol,, we have their testimony
24 already in the record?

25 MS. SOL : That's correct.

1 HEARING OFFICER FAY: Okay. Now we'll
2 move to the staff, Mr. Ratliff.

3 MR. RATLIFF: The staff witness is Steve
4 Baker.

5 HEARING OFFICER FAY: Okay, Mr. Baker
6 needs to be sworn.

7 MR. RATLIFF: Yes.
8 Whereupon,

9 STEVE BAKER
10 was called as a witness herein, and after first
11 having been duly sworn, was examined and testified
12 as follows:

13 THE REPORTER: Could you state and spell
14 your full name, please.

15 THE WITNESS: Steve Baker, B-a-k-e-r.

16 DIRECT EXAMINATION

17 BY MR. RATLIFF:

18 Q Mr. Baker, did you prepare the testimony
19 titled, power plant efficiency, that is part of
20 the FSA?

21 A Yes.

22 Q Is that testimony true and correct to
23 the best of your knowledge and belief?

24 A Yes, it is.

25 Q Do you have any changes to make in it at

1 this time?

2 A No.

3 MR. RATLIFF: The witness is available
4 for cross-examination.

5 HEARING OFFICER FAY: Does the applicant
6 have any questions?

7 MS. SOL : No.

8 HEARING OFFICER FAY: All right. Mr.
9 Sarvey.

10 MR. SARVEY: Yeah, just a couple.

11 CROSS-EXAMINATION

12 BY MR. SARVEY:

13 Q Mr. Baker, in your professional opinion
14 do all these turbines need to be sited in simple
15 cycle configuration for reliability purposes?

16 A That's my understanding.

17 Q Did you do an analysis of that at all?

18 A I analyzed the proposed use of the
19 project, which is to provide peaking power and
20 reliability service in San Francisco. And based
21 on my experience and understanding of how the
22 power grid works, I believe that that's an
23 appropriate application for simple cycle, gas
24 turbine peakers.

25 MR. SARVEY: All right, thank you, Mr.

1 Baker. That's all I have.

2 HEARING OFFICER FAY: Okay. I'm sorry,
3 Mr. Ratliff, did you move that testimony?

4 MR. RATLIFF: I move it.

5 HEARING OFFICER FAY: Okay. Any
6 objection to receiving Mr. Baker's testimony, a
7 portion of exhibit 46? Hearing none, so moved.
8 Thank you, Mr. Baker.

9 The next topic is cultural resources.
10 Mr. Sarvey, you have cross-examination on that, do
11 you not?

12 MR. SARVEY: No, I have none. My
13 expert's not available --

14 HEARING OFFICER FAY: You do not, okay.
15 Well, let's go ahead, then. If the parties are --

16 MR. RATLIFF: Mr. Fay, did we skip
17 reliability and gas supply?

18 HEARING OFFICER FAY: Oh, I'm sorry,
19 yes, we did. My mistake. Let's move to
20 reliability at this time before lunch. Ms. Sol,.

21 MS. SOL : Your Honor, the City's
22 testimony that addresses reliability is in two
23 parts of our testimony, project description
24 engineering and natural gas supply and purpose and
25 need. The witnesses would be Ms. Karen Kubick,

1 Mr. Brock, Mr. DeYoung, Ms. Hale and Mr. Flynn.

2 HEARING OFFICER FAY: And are they all
3 available for cross-examination?

4 MS. SOL : They are.

5 HEARING OFFICER FAY: Okay. And do they
6 have anything further to add to their previous
7 testimony?

8 MS. SOL : No, they do not.

9 HEARING OFFICER FAY: Okay. Then we'll
10 ask if the staff has any questions of the panel.

11 MR. RATLIFF: None.

12 HEARING OFFICER FAY: Okay. Mr. Sarvey,
13 do you have questions of the panel regarding
14 reliability?

15 MR. SARVEY: A few, yes.

16 HEARING OFFICER FAY: Okay.
17 Whereupon,

18 BARBARA HALE, KAREN KUBICK, STEVEN BROCK,
19 STEVEN DeYOUNG and BARRY FLYNN
20 were recalled as witnesses herein, and having been
21 previously duly sworn, were examined and testified
22 further as follows:

23 CROSS-EXAMINATION

24 BY MR. SARVEY:

25 Q Does five hours of startups and

1 shutdowns a day affect the reliability of these
2 turbines?

3 MR. BROCK: It's my understanding that
4 the manufacturers of these turbines say that no,
5 it will not.

6 MR. SARVEY: Okay. Are most of the
7 reliability issues in San Francisco related to
8 transmission outages or power plant outages?

9 MR. FLYNN: I don't have an answer to
10 that specifically in terms of counting up the
11 outages, but any time you have an outage to the
12 load, you're talking about not having enough
13 resources available to serve it.

14 And whether the triggering event at the
15 load dropping is a transmission line or a
16 generator is somewhat irrelevant as to the state
17 of the system. In other words, it takes both
18 transmission and generation to provide load
19 reliability.

20 MR. SARVEY: So you have no data related
21 to the cause of power outages in San Francisco?
22 Whether they're related to transmission or
23 generation tripping offline?

24 MR. FLYNN: I think I just explained
25 it's usually a combination of resources that is

1 needed to provide the reliable power.

2 MR. SARVEY: If you had an alternative
3 fuel supply like the Potrero peaking units would
4 your project be more reliable in the event of a
5 natural disaster?

6 MR. FLYNN: Excuse me? Would you repeat
7 that?

8 MR. SARVEY: I said if you had an
9 alternative fuel supply like the Potrero peaking
10 units wouldn't your project be more reliable in
11 the event of a natural disaster.

12 MR. FLYNN: What type of natural
13 disaster are you postulating?

14 MR. SARVEY: An earthquake, I believe.

15 MR. FLYNN: You're assuming it does
16 damage to which part of the infrastructure?

17 MR. SARVEY: Natural gas lines.

18 MR. FLYNN: Then, yes. If it did not
19 damage the fuel tanks, then that would provide
20 some power during the earthquake.

21 MR. SARVEY: Thank you. I want to go
22 back to the letter that I was pursuing under
23 project description and purpose on reliability
24 issues. It's the Cal-ISO letter. It's dated
25 September 14, 2004.

1 MS. SOL : Could we get straight the
2 letter. I don't want to -- I thought that what we
3 had found was attached to exhibit 25.

4 MR. SARVEY: I'm citing the FSA; this is
5 where I'm finding the letter. I know it's also
6 under Mr. Boyd's data request responses, as well.

7 HEARING OFFICER FAY: Okay, Mr. Sarvey,
8 you're going to have to guide us to where in the
9 FSA this is found.

10 MR. SARVEY: It's in appendix C of the
11 alternative section of the FSA; appendix C lists
12 C-133, but the letters are not numbered by page.
13 It would be the letter dated September 14, 2004,
14 to Marcie Edwards, to the Honorable Mayor Gavin
15 Newsome. Attachment 2 and attachment 3 are the
16 ones that --

17 (Pause.)

18 HEARING OFFICER FAY: While we're
19 waiting, I'll ask if we have a representative of
20 CARE on the phone line? Mr. Boyd? Okay, I guess
21 he's not on the line.

22 MS. SOL : Your Honor, we have the FSA
23 and we have appendix C and a list of letters
24 there. But there are no letters attached.

25 HEARING OFFICER FAY: We may have to

1 provide a copy of this to the witnesses.

2 Apparently their copy of the FSA doesn't contain
3 it.

4 MS. SOL : Mr. Sarvey, is what you're
5 referring to attachment 3 to the action plan?
6 Because I think there's other places where we do
7 have it.

8 MR. SARVEY: Are you looking at the June
9 8, 2005 update? Is that what the letter that
10 you're looking at, the Cal-ISO memorandum?

11 MS. SOL : The document that I have is
12 the action plan.

13 MR. SARVEY: The document I'm looking at
14 is -- well, there's several letters attached to
15 it. It says, update on the action plan for San
16 Francisco, June 8, 2005.

17 MS. SOL : Okay, I have an October 27,
18 2004 letter.

19 MR. SARVEY: Yeah, that's the one.

20 MS. SOL : Okay. And so it's attachment
21 3 to --

22 MR. SARVEY: Attachment --

23 MS. SOL : -- that letter.

24 MR. SARVEY: Attachment 3, yeah.

25 MS. SOL : Okay.

1 MR. SARVEY: to that letter.

2 MS. SOL : Okay, so --

3 HEARING OFFICER FAY: Okay. Mr. Sarvey,
4 can you fully identify this for the record.

5 MR. SARVEY: I can't because there's no
6 page numbers in the FSA to correspond to fully
7 identify it.

8 HEARING OFFICER FAY: All right, but you
9 located it in your copy of the FSA?

10 MR. SARVEY: In my copy of the FSA.

11 HEARING OFFICER FAY: Okay, all right.

12 MR. SARVEY: It's the October 27, 2004
13 letter.

14 HEARING OFFICER FAY: Okay. Go ahead,
15 then.

16 MR. SARVEY: Okay. I just wanted to
17 read to you from this. This is the Cal-ISO's
18 assessment of the risk involved in this project.

19 It says, the following are items to
20 consider in assessing the level of acceptable
21 risk. The original design and subsequent
22 configuration of the power system in San Francisco
23 was based on more local generation versus imported
24 generation. The action plan moves away from the
25 original design, and therefore creates greater

1 dependency on imported energy."

2 Do you agree with that or disagree with
3 that?

4 MR. FLYNN: I agree that more power
5 would be transmitted over new transmission, yes.

6 MR. SARVEY: Then the second part of the
7 question. The reality of all generation is that
8 at one point or another the units will trip
9 offline or break down. Again, without having more
10 local generation immediately available, dependency
11 on imports is increased."

12 Do you agree with that?

13 MR. FLYNN: I agree if you install less
14 generation and build more transmission you have
15 more of a reliance on imported electricity, yes.

16 MR. SARVEY: And then greater dependence
17 on external generation as opposed to local
18 generation also carries with it a greater risk in
19 areas that are prone to natural disasters." Do
20 you agree with that, as well?

21 MR. FLYNN: Not necessarily, no.

22 MR. SARVEY: Okay. And can you explain
23 why?

24 MR. FLYNN: Well, it depends on how the
25 generation versus the transmission reacts to the

1 natural disaster.

2 MR. SARVEY: Do you believe that the net
3 loss of 300 megawatts of inCity electricity
4 proposed by the action plan will leave the San
5 Francisco Peninsula more prone to impacts from
6 natural disasters?

7 MR. FLYNN: Not necessarily, no.

8 MR. SARVEY: Okay. Do you believe that
9 San Francisco's energy requirements are going to
10 continue to increase? Or do you believe they'll
11 decrease?

12 MR. FLYNN: I would assume they would
13 continue to increase.

14 MR. SARVEY: Okay, thank you. That's
15 all I have.

16 HEARING OFFICER FAY: Okay. We thank
17 the panel, then.

18 MS. SOL : Your Honor.

19 HEARING OFFICER FAY: Yes, Ms. Sol,?

20 MS. SOL : Is there an opportunity for
21 redirect?

22 HEARING OFFICER FAY: Yes, that'd be
23 fine. Be sure to speak up on this, since we're
24 moving right along.

25 MS. SOL : That's what I'm doing.

1 Actually, if I could just take one second to
2 confer with the witness.

3 HEARING OFFICER FAY: Okay.

4 (Pause.)

5 REDIRECT EXAMINATION

6 BY MS. SOL :

7 Q Mr. Flynn, you were asked whether in the
8 event of an earthquake having an alternative fuel
9 supply might make a plant more reliable. What
10 about under normal circumstances? Under normal
11 circumstances would having an alternative fuel
12 supply affect reliability?

13 MR. FLYNN: No, not under normal
14 circumstances. It's basically what would
15 determine reliability is the amount of
16 transmission and generation resources that are
17 being depended upon, and then what the reliability
18 or failure rate is of those specific components of
19 an electric system.

20 MS. SOL : And is it your understanding
21 that the generation in San Francisco now is
22 particularly reliable?

23 MR. FLYNN: It is my understanding that
24 the generation in San Francisco has been
25 unreliable. Compared both to the generation

1 capacity within the State of California in terms
2 of average failure rate, it's over double what the
3 failure rate is.

4 And even the failure rate of the Cal-ISO
5 system, as a whole, those generation units are
6 probably multiples of -- the failure rate is
7 probably multiples of what we would expect from a
8 new turbine plant like the City is proposing.

9 MS. SOL : So is it the case that having
10 more generation will -- more rather than less
11 generation will always result in more reliability?

12 MR. FLYNN: If the generation is all of
13 equal individual reliability, meaning they all
14 have the same failure rates, and they're all of
15 equivalent size, then you'll always be better to
16 have more generation.

17 However, if you're talking about the
18 situation in San Francisco where you have very old
19 equipment with a high failure rate, having more of
20 that does not necessarily provide better
21 reliability than less of a new, highly reliable
22 facility.

23 MS. SOL : And would having an
24 alternative fuel source be an advantage in any
25 type of natural disaster?

1 MR. FLYNN: Not necessarily. It depends
2 on what happens to the, in this case it would be
3 the natural gas fuel supply.

4 MS. SOL : Thank you, Mr. Flynn. I have
5 no further questions.

6 HEARING OFFICER FAY: Any recross, Mr.
7 Ratliff?

8 MR. RATLIFF: No.

9 HEARING OFFICER FAY: Mr. Sarvey?

10 MR. SARVEY: Yeah, I have one question.

11 RE CROSS-EXAMINATION

12 BY MR. SARVEY:

13 Q Earlier I asked you if you could
14 identify any outages in San Francisco related to
15 the failure of a power plant, and you answered no.
16 Can you identify or tell me about any outages that
17 you're aware of that resulted as a failure of a
18 transmission line?

19 MR. FLYNN: Well, I recall the December
20 something '98 outage that involved loss of
21 transmission and loss of generation. The failure
22 event was on the transmission system, but both
23 went down.

24 MR. SARVEY: Do you believe there's a
25 reason that Cal-ISO is requiring that the three

1 units from this project are going to be sited on
2 the San Francisco side of the Martin substation?

3 MR. FLYNN: the first part of your
4 question was do I what?

5 MR. SARVEY: Do you believe that Cal-ISO
6 has a legitimate reason for requiring that all of
7 these, the three units from the SFERP are sited
8 north of the Martin substation?

9 MS. SOL : Objection, Your Honor, that
10 goes beyond the scope of redirect.

11 HEARING OFFICER FAY: That's correct,
12 Mr. Sarvey, it does. So that's sustained.

13 MR. SARVEY: Okay, thank you.

14 HEARING OFFICER FAY: All right.

15 MR. SARVEY: That's all I have.

16 HEARING OFFICER FAY: Nothing further?

17 MR. SARVEY: That's it.

18 HEARING OFFICER FAY: Okay, good. We're
19 going to take a one-hour -- oh, I'm sorry,
20 Commissioner Geesman.

21 COMMISSIONER GEESMAN: Mr. Flynn, the
22 phrase alternative fuel supply has come up several
23 times in your testimony and response to questions.
24 Could you clarify what you mean by that, when you
25 use that phrase?

1 MR. FLYNN: I'm not sure I -- can you
2 point me to where it was used? Alternative to --

3 COMMISSIONER GEESMAN: Well, that's what
4 I'm trying to understand. You've said alternative
5 fuel supply.

6 MR. FLYNN: In my testimony?

7 COMMISSIONER GEESMAN: And in your
8 response to several of the questions, including
9 redirect by Ms. Sol,.

10 I'm trying to understand what you mean
11 when you say alternative fuel supply.

12 MR. FLYNN: Well, I think for the
13 purposes of both the existing generation and the
14 new generation we're either talking about natural
15 gas or oil.

16 COMMISSIONER GEESMAN: So an alternative
17 source of natural gas for a particular plant?

18 MR. FLYNN: I did not mean to infer that
19 there was more than one source of natural gas.
20 I'm sorry if I --

21 COMMISSIONER GEESMAN: Okay, so --

22 MR. FLYNN: -- led you to think that.

23 COMMISSIONER GEESMAN: So, you're
24 speaking then of a plant that would also be
25 equipped to burn distillate oil, as well as

1 natural gas?

2 MR. FLYNN: I think what Mr. Sarvey was
3 trying to allude to, I guess, is the fact that
4 some of the equipment at Potrero Power Plant does
5 have oil supply.

6 COMMISSIONER GEESMAN: Thank you.

7 COMMISSIONER BOYD: I sat here wondering
8 the same question. Now I'm going to have to ask
9 Mr. Sarvey a question. In your use of alternative
10 fuel supply, were you really referring to the
11 Potrero Plant's capability to use distillate fuel?

12 MR. SARVEY: Potrero and other methods,
13 as well.

14 COMMISSIONER BOYD: Other methods?

15 MR. SARVEY: For power generation.
16 Wouldn't necessarily be distillate fuel, it could
17 be some other. Could be coal, could be anything.

18 COMMISSIONER BOYD: At that plant, or
19 another plant somewhere in the San Francisco Bay
20 Area?

21 MR. SARVEY: Another plant in San
22 Francisco.

23 HEARING OFFICER FAY: Okay. Since
24 there's nothing further then, we're going to take
25 a break now for one hour. So we'll return at five

1 minutes after one. And we'll start with cultural
2 resources.

3 (Whereupon, at 12:04 p.m., the hearing
4 was adjourned, to reconvene at 1:05
5 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:06 p.m.

3 HEARING OFFICER FAY: All right, we're
4 ready to proceed. We're back on the record and
5 we'll move forward with the applicant's
6 presentation on cultural resources. Ms. Sol,.

7 MR. RATLIFF: Mr. Fay.

8 HEARING OFFICER FAY: Yes, Mr. Ratliff.

9 MR. RATLIFF: I hesitate to mention it
10 but the staff witness never testified on
11 reliability and we probably should move his
12 testimony into the record; and offer him for
13 cross-examination, as well.

14 HEARING OFFICER FAY: Is there objection
15 to receiving the staff's testimony on reliability
16 on declaration?

17 MR. SARVEY: No objection.

18 HEARING OFFICER FAY: Okay, that would
19 mean you're foregoing your cross-examination.

20 MR. SARVEY: I have no questions for Mr.
21 Baker.

22 HEARING OFFICER FAY: All right. Then
23 Mr. Baker's testimony on reliability is received
24 into evidence as if read.

25 Okay, cultural resources, Ms. Sol,.

1 Thank you, Mr. Ratliff.

2 MS. SOL : I'd like to call as a witness
3 Mr. Douglas Davy.

4 Whereupon,

5 DOUGLAS DAVY

6 was called as a witness herein, and after first
7 having been duly sworn, was examined and testified
8 as follows:

9 THE REPORTER: Please spell your full
10 name for the record.

11 THE WITNESS: My name is Douglas Davy,
12 spelled D-a-v-y.

13 MS. SOL : And Dr. Davy's qualifications
14 are attached to the prehearing conference as
15 appendix A.

16 DIRECT EXAMINATION

17 BY MS. SOL :

18 Q Mr. Davy, do you have before you the
19 testimony that was filed by the City on April
20 17th, pages 17 and 18?

21 A Yes, I do.

22 Q Do you have before you the list of
23 documents under a prior filings?

24 A Yes.

25 Q Is that the list of documents or

1 portions of documents that you're sponsoring
2 today?

3 A Yes, it is.

4 Q Do you have any corrections or additions
5 to make at this time?

6 A No, I do not.

7 Q To the extent that there are facts in
8 those documents are they true to the best of your
9 knowledge?

10 A Yes, they are.

11 Q And to the extent there are opinions in
12 those documents do they represent your
13 professional judgment?

14 A They do.

15 Q And do you adopt those documents as
16 your sworn testimony here today?

17 A Yes, I do.

18 MS. SOL : Okay, Your Honor, I'd like to
19 move that these documents be entered into the
20 record.

21 HEARING OFFICER FAY: And are they all
22 partial? The exhibit citations, are these -- or
23 do you know?

24 MS. SOL : Yeah, I believe they are all
25 partial.

1 HEARING OFFICER FAY: Okay. Any
2 objection to receiving the testimony of Dr. Davy
3 and the exhibits indicated on the City's filing?
4 Okay, hearing none, those exhibits are moved into
5 the record, as well as his testimony.

6 MS. SOL : Dr. Davy is available for
7 cross-examination.

8 HEARING OFFICER FAY: Mr. Ratliff, any
9 questions?

10 MR. RATLIFF: No.

11 HEARING OFFICER FAY: Mr. Sarvey, any
12 questions of Dr. Davy?

13 MR. SARVEY: Yes.

14 CROSS-EXAMINATION

15 BY MR. SARVEY:

16 Q In your analysis here did you consult
17 the San Francisco Landmarks Preservation Agency
18 Board for advice?

19 A I don't recall specifically consulting
20 the Landmarks Preservation Agency Board. But I
21 believe that it's possible that the information
22 center had done so.

23 Q Is that a required LORS for San
24 Francisco to consult that agency?

25 A I don't know.

1 MR. SARVEY: Okay, that's all I have.

2 Thank you.

3 HEARING OFFICER FAY: Okay. Anything
4 further, Ms. Sol,?

5 MS. SOL : No.

6 HEARING OFFICER FAY: Okay, thank you,
7 Dr. Davy.

8 Mr. Ratliff.

9 MR. RATLIFF: The staff witnesses are
10 Beverly Bastian and Gary Reinoehl.

11 HEARING OFFICER FAY: Okay, we'd ask the
12 court reporter to please swear these witnesses.
13 Whereupon,

14 BEVERLY BASTIAN and GARY REINOEHL
15 were called as witnesses herein, and after first
16 having been duly sworn, were examined and
17 testified as follows:

18 THE COURT REPORTER: Could you each, one
19 at a time, state and spell your full names.

20 MR. REINOEHL: Gary Reinoehl, Gary is
21 G-a-r-y; Reinoehl is R-e-i-n-o-e-h-l.

22 MS. BASTIAN: Beverly Bastian,
23 B-e-v-e-r-l-y B-a-s-t-i-a-n.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Ms. Bastian, did you prepare this
4 testimony in conjunction with Mr. Reinoehl?

5 MS. BASTIAN: I did.

6 MR. RATLIFF: And it was primarily your
7 work with Mr. Reinoehl supervising, is that
8 correct?

9 MS. BASTIAN: Correct.

10 MR. RATLIFF: And is this testimony true
11 and correct to the best of your knowledge?

12 MS. BASTIAN: It is.

13 MR. RATLIFF: And do you have any
14 changes to make in it at this time?

15 MS. BASTIAN: Other than that errata.

16 MR. RATLIFF: The staff filed previously
17 an errata which, I think, made a very minor change
18 in Mr. Reinoehl's testimony.19 HEARING OFFICER FAY: Which exhibit is
20 that?21 MR. RATLIFF: It's been -- it was marked
22 as exhibit 48.

23 HEARING OFFICER FAY: Okay.

24 BY MR. RATLIFF:

25 Q Ms. Bastian, could you summarize your

1 testimony briefly for us?

2 MS. BASTIAN: In regard to this change?

3 MR. RATLIFF: No.

4 MS. BASTIAN: Overall?

5 MR. RATLIFF: Yes.

6 MS. BASTIAN: Well, I will skip to --
7 assume that it's understood what our process is,
8 the staff of cultural resources. And also the
9 historical and prehistoric background material
10 that was provided in the testimony will be
11 considered in the written testimony, and proceed
12 to our findings.

13 Staff gave consideration only to those
14 significant resources which were close enough to
15 the project to possibly suffer an impact. And we
16 found there were no known archeological resources
17 within the project impact area.

18 Several known historic period resources
19 were identified, and these included a large
20 historic district known as the Central Waterfront
21 District, and seven particular specific buildings
22 which were considered contributors to the Central
23 Waterfront District.

24 And we also found there were no -- our
25 Native American contacts provided no identified

1 cultural resources in the project area.

2 So, for impacts, there will be none on
3 archeological resources, and none on ethnographic
4 resources. We considered the impacts on the
5 historic district I mentioned and the buildings
6 that I mentioned. Saw two possible kinds of
7 impacts that might arise from this project.

8 One would be the degraded integrity of
9 materials that could result from vibrations from
10 construction equipment along the routes of the
11 projects linears. And the other would be degraded
12 integrity of setting, having to do with the scale
13 and stylistic compatibility of the new plant
14 structures.

15 But our conclusion was, after
16 consideration, that the Central Waterfront
17 District, which might have had an effect on the
18 integrity of setting, there would be no impact.
19 The project is compatible with the industrial
20 setting that this area has had historically.

21 The five Third Street and Illinois
22 Street buildings which are long the linears where
23 there might have been a potential effect on
24 materials from the vibrations of trench
25 construction, we found no greater impact than for

1 other heavy duty truck traffic that was common in
2 the area. So, no significant effect.

3 And as the other two buildings were
4 sugar warehouses of historic character on 23rd
5 Street. And we found that they would have the
6 potential for an impact on their setting and
7 feeling was there, but was not significant.

8 So the impacts of this project on known
9 cultural resources do not constitute a significant
10 effect on the environment.

11 And we wish to provide mitigation, not
12 for known resources, but for the possibility that
13 there are, as yet, unknown possibly significant
14 archeological resources which may be encountered
15 during construction.

16 Staff has recommended mitigation to
17 reduce these potential impacts to less than
18 significant. And these will involve particularly
19 archeological monitoring in areas of ground
20 disturbance in particular locations along the old
21 shoreline where prehistoric remains could be
22 buried; and some filled areas where fill could
23 cover prehistoric sites or old boats; and in
24 filled areas where the fill might contain scuttled
25 boats. That was a common way to dispose of

1 derelict boats in the historic period.

2 The eight conditions that staff is
3 proposing correspond almost exactly to the
4 mitigation measures the applicant suggested. The
5 first is to have a qualified archeologist oversee
6 all cultural resources activities for the project.
7 And to allow him or her to hire assistants, as
8 needed.

9 The second is to insure the designated
10 archeologist receives maps, project information
11 and construction schedules needed to oversee the
12 monitoring.

13 The next is to train construction
14 workers to recognize archeological resources.
15 Further conditions apply to having qualified
16 archeologists and Native Americans, as
17 appropriate, monitor construction activities.

18 And the last, to give all archeologist
19 the power to halt construction if archeological
20 resources are encountered; and to recover data
21 from significant archeological deposits if
22 construction cannot avoid them.

23 So staff concluded that the -- to
24 recommend the Commission adopt the cultural
25 resources conditions of certification. And staff

1 believes these conditions would mitigate any
2 impacts to unknown cultural resources located in
3 the areas discussed in this assessment to a less
4 than significant level.

5 MR. RATLIFF: Does that conclude your
6 summary?

7 MS. BASTIAN: That does.

8 MR. RATLIFF: And, Mr. Reinoehl, do you
9 have anything to add to that?

10 MR. REINOEHL: No, I do not.

11 MR. RATLIFF: Okay. Thank you. The
12 witnesses are available.

13 HEARING OFFICER FAY: Okay. Would you
14 care to move their testimony before --

15 MR. RATLIFF: Oh, yes, please. That
16 portion of the FSA which is exhibit 46, and that
17 portion of the exhibit 48, which is the errata
18 that we filed, which pertains to cultural
19 resources. We would move that into evidence.

20 HEARING OFFICER FAY: Any objection?
21 Hearing none, so moved. And the witnesses are
22 available. Ms. Sol,?

23 MS. SOL : No questions, Your Honor.

24 HEARING OFFICER FAY: All right. Mr.
25 Sarvey?

1 MR. SARVEY: Yeah, I have a couple
2 questions.

3 CROSS-EXAMINATION

4 BY MS. SOL :

5 Q I don't know who to direct this to, but
6 one of you contacted Mr. Francisco DaCosta
7 concerning archeological resources. Can you tell
8 us, you know, what his response was to your
9 questions, or what your questions were and what
10 his responses were?

11 MS. BASTIAN: I think actually my and
12 Mr. Reinoehl's contact with Francisco was a casual
13 meeting at the first public hearing on San
14 Francisco, at which time he merely informed us
15 that he knew about existing prehistoric sites that
16 were in the area where the, at that time, proposed
17 pumping plant, which it has been since -- is no
18 longer a part of the description of the project,
19 but at that time was of concern.

20 And he made us aware that there were
21 cultural resources there. And we asked that the
22 applicant contact him. And I believe they are the
23 ones who actually spoke with him at length on that
24 topic.

25 MR. SARVEY: Okay, thank you.

1 HEARING OFFICER FAY: Nothing further?

2 MR. SARVEY: Nothing further.

3 HEARING OFFICER FAY: Okay. Is CARE on
4 the line? Okay. I'll just note for the record
5 that CARE requested, I understand, just a day or
6 two ago, to have a telephone hookup. But
7 apparently they were not able to be on that
8 hookup.

9 All right, anything further, Mr.
10 Ratliff?

11 MR. RATLIFF: No.

12 HEARING OFFICER FAY: And also noting, I
13 know we covered this before, but just to touch
14 base on when we're dealing with cultural
15 resources, Mr. Sarvey, you were scheduled to have
16 a witness, but no testimony was filed on cultural,
17 is that correct?

18 MR. SARVEY: Yeah, the witness couldn't
19 travel to Sacramento, so we didn't see any reason
20 to prepare testimony. But he is going to provide
21 public comment in San Francisco.

22 HEARING OFFICER FAY: Okay.

23 MR. SARVEY: He's poor and they don't
24 have the resources to make it out here to
25 Sacramento.

1 HEARING OFFICER FAY: Okay, and we're
2 holding two days of hearings down there, so he
3 will have plenty of time to comment.

4 MR. SARVEY: Thank you, Mr. Fay.

5 HEARING OFFICER FAY: Sure, you bet.
6 Okay. Then that concludes cultural resources.
7 And we'll move to geology and paleontology. Ms.
8 Sol,.

9 MS. SOL : Yes. We have two sections
10 that relate to geology and paleontology. And our
11 witnesses are Tom Lae and Mr. Geoff Spaulding.
12 Whereupon,

13 THOMAS LAE and WALTER GEOFFREY SPAULDING
14 were called as witnesses herein, and after first
15 having been duly sworn, were examined and
16 testified as follows:

17 THE COURT REPORTER: And, please, one at
18 a time, state and spell your full names.

19 MR. LAE: I'm Thomas Allen Lae; last
20 name is spelled L-a-e.

21 DR. SPAULDING: And Walter Geoffrey
22 Spaulding; Geoffrey is G-e-o-f-f-r-e-y and
23 Spaulding with a "u".

24 MS. SOL : And the qualifications for
25 these witnesses are contained in appendix A of the

1 prehearing conference statement filed by the City.

2 I'll begin with Mr. Lae's testimony.

3 DIRECT EXAMINATION

4 BY MS. SOL :

5 Q Mr. Lae, do you have before you the
6 testimony of the City that was filed on April
7 17th?

8 MR. LAE: Yes, I do.

9 MS. SOL : Okay. And do you have before
10 you section C that lists sections that you are
11 sponsoring?

12 MR. LAE: Yes, I do.

13 MS. SOL : Do you have any corrections
14 or additions to make at this time?

15 MR. LAE: No, I do not.

16 MS. SOL : And to the extent that there
17 are facts in those documents, are they true to the
18 best of your knowledge?

19 MR. LAE: Yes.

20 MS. SOL : And to the extent there are
21 opinions in those documents, do they represent
22 your professional judgment?

23 MR. LAE: Yes.

24 MS. SOL : And do you adopt those
25 documents as your sworn testimony here today?

1 MR. LAE: Yes, I do.

2 MS. SOL : Your Honor, I'd like to move
3 that those documents be entered into the record.

4 HEARING OFFICER FAY: Is there
5 objection? Hearing none, so moved.

6 And just for clarification, Ms. Sol,,
7 the testimony passed out this morning regarding
8 geologic resources, page 38 of that testimony, it
9 cites in the second bullet, exhibit 35, is that
10 particular exhibit complete? It looks like it's
11 referring to just one response.

12 Or is that just one answer --

13 MS. SOL : You know, I think there was
14 only one answer. Let me check that.

15 (Pause.)

16 MS. SOL : Yes, there was just one
17 answer.

18 HEARING OFFICER FAY: So, --

19 MS. SOL : It's one answer and a
20 document attached.

21 HEARING OFFICER FAY: Great, thank you.
22 And the witnesses are available?

23 MS. SOL : The witness is -- should I
24 then do the paleontological witness, or shall we
25 take them one at a time?

1 HEARING OFFICER FAY: Yes, could you
2 please, because we'll deal with it that way.

3 MS. SOL : Okay. So I'd like to call
4 Mr. Geoff Spaulding.

5 DIRECT EXAMINATION

6 BY MS. SOL :

7 Q Mr. Spaulding, do you have before you
8 the testimony that was filed by the City on April
9 17th?

10 DR. SPAULDING: Yes, I do.

11 MS. SOL : And do you have the section
12 titled, paleontological resources, the first page
13 of which doesn't have a page number, and the
14 second page of which is numbered 40?

15 DR. SPAULDING: Yes, I do.

16 MS. SOL : And do you have before you
17 the list of documents under section 1C, prior
18 filings?

19 DR. SPAULDING: Yes.

20 MS. SOL : And are you adopting those
21 documents as your testimony in this case today?

22 DR. SPAULDING: Yes, I do.

23 MS. SOL : Do you have any corrections
24 or updates?

25 DR. SPAULDING: No, I do not.

1 MS. SOL : And to the extent there are
2 facts in those documents, are they true to the
3 best of your knowledge?

4 DR. SPAULDING: Yes, they are.

5 MS. SOL : And to the extent that there
6 are opinions in those documents, do they represent
7 your professional judgment?

8 DR. SPAULDING: Yes, they do.

9 MS. SOL : And do you adopt those
10 documents are your sworn testimony here today?

11 DR. SPAULDING: Yes, I do.

12 MS. SOL : Your Honor, I'd move to have
13 those documents entered into the record -- or
14 portions of documents entered into the record.

15 HEARING OFFICER FAY: Any objection?

16 Hearing none, so moved.

17 MS. SOL : Okay, the witness are now
18 available for cross-examination.

19 HEARING OFFICER FAY: Okay, then, Mr.
20 Ratliff. And, either on redirect or on cross,
21 please address the modifications to the paleo, the
22 comments on paleo conditions that are set forth in
23 the witness' testimony.

24 MR. RATLIFF: I thought when our witness
25 testified I would have him --

1 HEARING OFFICER FAY: Just confirm the
2 staff's position.

3 MR. RATLIFF: Right.

4 HEARING OFFICER FAY: Okay, that's fine.
5 Any questions of these witnesses?

6 MR. RATLIFF: No.

7 HEARING OFFICER FAY: Okay, Mr. Sarvey,
8 do you have any questions?

9 CROSS-EXAMINATION

10 BY MR. SARVEY:

11 Q Do you believe that this site here is
12 prone to liquefaction?

13 DR. SPAULDING: Excuse me, sir, while I
14 get the geologist.

15 MR. SARVEY: Okay.

16 MR. LAE: Yes, this site is located in a
17 known liquefaction potential area.

18 MR. SARVEY: Okay. Do you believe that
19 the structures at this site should be designed
20 with seismic standards greater than the minimum
21 standards of the Uniform Building Code?

22 MR. LAE: Greater than the minimum
23 standards?

24 MR. SARVEY: Um-hum.

25 MR. LAE: No, I do not.

1 MR. SARVEY: You do not? Okay, that's
2 all I have.

3 HEARING OFFICER FAY: Anything further,
4 Ms. Sol,?

5 MS. SOL : No.

6 HEARING OFFICER FAY: I'm sorry, Mr.
7 Sarvey, I assumed you were done with both
8 witnesses.

9 MR. SARVEY: Yes, I am, thank you.

10 HEARING OFFICER FAY: Okay. Mr.
11 Ratliff.

12 MR. RATLIFF: Yes, the staff witness is
13 Dr. Patrick Pilling; he's the witness for both
14 geology and paleontology.
15 Whereupon,

16 PATRICK PILLING
17 was called as a witness herein, and after first
18 having been duly sworn, was examined and testified
19 as follows:

20 THE COURT REPORTER: Please state and
21 spell your full name for the record.

22 THE WITNESS: The name is Pat Pilling,
23 P-i-l-l-i-n-g.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Dr. Pilling, did you prepare the portion
4 of the staff FSA titled, geology and paleontology?

5 A Yes, I did.

6 Q Is that testimony true and correct to
7 the best of your knowledge and belief?

8 A Yes, it is.

9 Q Do you have any changes to make in your
10 conditions of certification at this time, or are
11 there any other corrections to make in your
12 testimony?13 A Yeah, there's a minor correction to
14 paleo conditions of certification 2, 3 and 4, to
15 reflect the presence of uncontrolled fill, which
16 is previously disturbed material on site. That
17 would not require the paleo monitoring efforts
18 that would be required for undisturbed materials.19 MR. RATLIFF: And we'll give you a hard
20 copy of those changes.21 The change, just to reiterate, is to
22 indicate that since there are no paleo resources
23 in fill, his conditions are for those portions
24 where there is disturbance of nonfill material, or
25 actual sediments.

1 BY MR. RATLIFF:

2 Q With those changes is your testimony
3 true and complete to the best of your knowledge
4 and belief?

5 A Yes, it is.

6 Q Could you summarize your testimony
7 briefly?

8 A Yeah. The site main conditions are
9 geologic conditions at the site; the site's prone
10 to strong seismic ground shaking, potential
11 liquefaction and potential differential settlement
12 in the case of a design earthquake.

13 Q Does that complete your summary?

14 A Yes.

15 Q You heard the last question to the
16 applicant witness concerning the California
17 Building Code requirements for seismic safety.
18 Could you possibly describe the different
19 provisions in the California Code regarding
20 seismic safety?

21 A Yeah, the site's located in what has the
22 most stringent design requirements per the
23 California Building Code, both due to its
24 proximity to the faults, and also with the
25 potential for liquefaction, that categorizes the

1 site to be required to be designed with the
2 highest stringent for seismic design of any site
3 in the state.

4 Q Can you describe what kinds of measures
5 are taken to build on such sites to try to make
6 sure that such buildings would withstand
7 earthquakes?

8 A Yeah, the site, since it exhibits a
9 liquefaction potential during a design earthquake,
10 measures to mitigate any problems associated with
11 that would include the installation of deep
12 foundations for foundation support. To basically
13 transfer load through the materials, the surface
14 of the site that would exhibit excessive
15 deformations, so that by founding the foundations
16 in materials that can support the load and
17 bypassing that material, you mitigate the effects
18 of the liquefaction.

19 Q Do you have anything else to add to your
20 testimony?

21 A No, I don't.

22 MR. RATLIFF: Thank you. The witness is
23 available. And we would move his testimony in,
24 exhibit 46, at this time.

25 HEARING OFFICER FAY: Okay. Any

1 objection to receiving Dr. Pilling's testimony?

2 MS. SOL : No.

3 HEARING OFFICER FAY: Hear none, so
4 that's introduced in the record.

5 And, Dr. Pilling, before we start, just
6 for record-keeping, have you had a chance to look
7 at the collection of testimony the applicant
8 provided this morning, specifically the unnumbered
9 page that proceeds page 40, that would be page 39,
10 and page 40, in which applicant points out the
11 changes to Pal-2, -3 and -4 that they had in mind?

12 DR. PILLING: Yes, I have.

13 HEARING OFFICER FAY: And are those
14 identical to the changes you're agreeing to today?

15 DR. PILLING: Yes, they are.

16 HEARING OFFICER FAY: Okay, thank you.

17 All right, any questions, Ms. Sol,, of the
18 witness?

19 MS. SOL : No, Your Honor.

20 HEARING OFFICER FAY: Okay. Mr. Sarvey,
21 any questions?

22 MR. SARVEY: Yeah, I have a couple.

23 CROSS-EXAMINATION

24 BY MR. SARVEY:

25 Q I asked this question to the applicant;

1 I'm going to ask it to you. Do you believe that
2 the large structure should be designed to meet
3 seismic resistance standards greater than the
4 minimum standards in the Uniform Building Code?

5 A No, I do not.

6 Q Are you aware of any LORS of the project
7 area, i.e., the waterfront land use plan, that
8 requires that?

9 A No, I'm not.

10 Q How deep do you think the foundational
11 structures of this project need to be dug?

12 A Slightly beyond the scope of my work on
13 this. But typically, you know, you're going to be
14 going below the depth of the artificial fill
15 that's on the site, which is approximately 20 to
16 30 feet deep.

17 Q 230 feet deep?

18 A Twenty to 30 feet --

19 Q Oh, I'm sorry.

20 MR. SARVEY: Thank you. That's all I
21 have.

22 HEARING OFFICER FAY: Okay. I'm glad
23 you clarified that.

24 (Laughter.)

25 HEARING OFFICER FAY: All right, thank

1 you very much, Dr. Pilling.

2 And I'll just note for the record that
3 at the prehearing conference CARE asked to submit
4 testimony on geology and paleontology. And they
5 made very brief reference to liquefaction in their
6 prefiled testimony. But Mr. Brown, who filed that
7 testimony, is not here. And so there will be no
8 testimony offered by CARE on geology and
9 paleontology.

10 Next topic we have to take up is worker
11 safety and fire protection.

12 MS. SOL : Your Honor, we have two
13 witnesses on worker health and safety, Sarah
14 Madams and James P. Bushnell.

15 HEARING OFFICER FAY: Please swear the
16 witnesses.

17 Whereupon,

18 SARAH MADAMS and JAMES BUSHNELL
19 were called as witnesses herein, and after first
20 having been duly sworn, were examined and
21 testified as follows:

22 THE COURT REPORTER: Please individually
23 state and spell your names for the record.

24 MR. BUSHNELL: Jim Bushnell,
25 B-u-s-h-n-e-l-l.

1 MS. MADAMS: Sarah Madams, S-a-r-a-h
2 M-a-d-a-m-s.

3 DIRECT EXAMINATION

4 BY MS. SOL :

5 Q Mr. Bushnell, I'm going to ask you some
6 questions on behalf of the panel. Do you have
7 before you the testimony that the City filed on
8 April 17th?

9 MR. BUSHNELL: I do.

10 MS. SOL : And do you have before you
11 section introduction, see prior filings in which a
12 number of documents are listed?

13 MR. BUSHNELL: I do.

14 MS. SOL : Are those the documents that
15 you're sponsoring here today?

16 MR. BUSHNELL: They are.

17 MS. SOL : And to the extent -- do you
18 have any corrections or additions?

19 MR. BUSHNELL: No, I don't.

20 MS. SOL : To the extent there are facts
21 in those documents, are they true to the best of
22 your knowledge?

23 MR. BUSHNELL: They are.

24 MS. SOL : And to the extent there are
25 opinions, do they represent your professional

1 judgment?

2 MR. BUSHNELL: They do.

3 MS. SOL : And do you adopt those
4 documents, portions of documents, as your
5 testimony here today?

6 MR. BUSHNELL: Yes.

7 MS. SOL : As your sworn testimony here
8 today?

9 MR. BUSHNELL: Yes.

10 MS. SOL : Your Honor, I'd like to move
11 to enter these documents into the record.

12 HEARING OFFICER FAY: Is there any
13 objection? All right. So moved.

14 MS. SOL : And the witnesses are
15 available for cross-examination.

16 HEARING OFFICER FAY: Mr. Ratliff, does
17 the staff have any questions?

18 MR. RATLIFF: No.

19 HEARING OFFICER FAY: Okay. Mr. Sarvey.

20 CROSS-EXAMINATION

21 BY MR. SARVEY:

22 Q Did you assess the air quality impacts
23 on construction workers from the PM10 and PM2.5
24 levels that will occur during construction?

25 MR. BUSHNELL: I have not assessed those

1 at this time because the plans that would be put
2 in place to assess that are specific to the
3 construction project that will take place.

4 MR. SARVEY: So at this time you can't
5 tell me whether there's any issues related to
6 worker safety related to the PM2.5 impacts from
7 the movement of these soils?

8 MR. BUSHNELL: The issues aren't
9 assessed yet because the specific construction
10 project that will take place has not been firmly
11 established in terms of the exact tasks that will
12 be taking place.

13 MR. SARVEY: So, not knowing these
14 mitigation measures, can you provide us assurance
15 that there will be no impacts to safety of
16 workers, construction workers, moving the soil?

17 MR. BUSHNELL: Impacts to construction
18 workers will be mitigated in accordance with the
19 process in the testimony, which is to evaluate the
20 hazards to the workers and then implement
21 controls.

22 MR. SARVEY: But at this point you
23 haven't evaluated the hazards to the workers?

24 MR. BUSHNELL: In general terms, yes; in
25 specific terms, for each individual person who

1 will be there, no.

2 MR. SARVEY: Has the applicant received
3 any correspondence from the Department of Toxic
4 Substances that's requesting a health risk
5 assessment for the linears on this project in
6 order to secure worker safety?

7 MS. SOL : Your Honor, I believe we're
8 moving into the areas of public health and air
9 quality.

10 HEARING OFFICER FAY: Well, we'll give
11 Mr. Sarvey a little leeway on this. You may be
12 right, but if the witness has an answer, go ahead.

13 MR. BUSHNELL: Could you repeat the
14 question?

15 MR. SARVEY: I said are you aware of
16 communication by the Department of Toxic
17 Substances Control requesting a health risk
18 assessment on the linears of this project before
19 you begin construction?

20 MR. BUSHNELL: I'm not aware of anything
21 that's already happened, no.

22 MR. SARVEY: Okay. That's all I have.

23 HEARING OFFICER FAY: Okay. Mr.
24 Bushnell, following up on Mr. Sarvey's question,
25 can you generally tell us, assuming that

1 particulate matter, PM2.5, would be considered a
2 hazard for construction workers, how would that be
3 dealt with from your perspective, and when in the
4 process?

5 MR. BUSHNELL: Dust control is a
6 standard part of construction. And engineering
7 controls during construction include measures such
8 as dust suppression using water hose. They can
9 include items up to and including the use of
10 respiratory protection.

11 In my experience in projects such as
12 this, dust suppression is easily dealt with with
13 standard construction techniques.

14 HEARING OFFICER FAY: And do the
15 conditions of certification that applicant has
16 agreed to contain a provision to analyze the kind
17 of dust suppression that may be necessary to
18 protect workers, and then a path to implement
19 that?

20 MR. BUSHNELL: The specific items that
21 will take place on the site, I do not believe, to
22 the best of my knowledge, have been established
23 yet. Establishing those protections for
24 individual workers is part of the preparing the
25 plans and going through the health and safety

1 process that's explained in the testimony.

2 HEARING OFFICER FAY: So there is a
3 requirement that the plan be developed that would
4 address that?

5 MR. BUSHNELL: The plan will address it.
6 What the plan will say, I don't know what it's
7 going to say yet.

8 HEARING OFFICER FAY: I understand.

9 Thank you.

10 Anything further, Ms. Sol,?

11 REDIRECT EXAMINATION

12 BY MS. SOL :

13 Q Is it your understanding, then, that
14 there are mitigation measures that would address
15 the risks to workers, and that the applicant will
16 implement those measures, as necessary, to protect
17 workers?

18 MR. BUSHNELL: Yes.

19 HEARING OFFICER FAY: Anything further,
20 other parties?

21 MR. SARVEY: Yeah, I'd like to ask a
22 couple questions.

23 HEARING OFFICER FAY: Within the scope
24 of --

25 MR. SARVEY: Within the scope of --

1 HEARING OFFICER FAY: -- her questions.

2 MR. SARVEY: --redirect of the questions
3 that you asked, Mr. Fay.

4 RECROSS-EXAMINATION

5 BY MR. SARVEY:

6 Q Regarding the particulate matter impacts
7 that Mr. Fay was asking you about, what standards
8 or what protective devices are you recommending
9 for the soil contamination at this site, and on
10 the linears?

11 MS. SOL : Objection, Your Honor, that
12 goes to the soil contamination issue, which will
13 be heard on May 22nd.

14 HEARING OFFICER FAY: Yeah, that's
15 sustained.

16 MR. SARVEY: I'd like to ask that worker
17 safety stay open, then, until that time, so we can
18 discuss those issues, please.

19 HEARING OFFICER FAY: Well, are you
20 planning on bringing Mr. Bushnell back? This may
21 be difficult in terms of witness availability.

22 MS. SOL : It wasn't my plan. We can
23 discuss it; if it's needed that we bring him back,
24 we will.

25 HEARING OFFICER FAY: Okay. Why don't

1 we just indulge Mr. Sarvey for -- how many
2 questions do you have on this?

3 MR. SARVEY: I just wanted to know
4 what -- I don't have a lot of questions, I just
5 want to know what his standards were; how he was
6 going to deal with the contamination at the site.

7 HEARING OFFICER FAY: Okay, and keeping
8 in mind that he has already testified that the
9 precise steps have not been determined, but that
10 there are requirements in place that will lead to
11 determining those steps. Okay, go ahead.

12 MR. RATLIFF: Mr. Fay, if I could. Our
13 witness for this area is also our witness for
14 public health and also our witness for the soil
15 remediation issues, waste management. So,
16 certainly staff would be willing to try to answer
17 Mr. Sarvey's questions at a future date when we
18 have those hearings.

19 HEARING OFFICER FAY: Okay, appreciate
20 that.

21 MR. RATLIFF: Or today, if he's prepared
22 to. Mr. Sarvey's welcome to ask him those
23 questions, and we'll see if they can be answered
24 today.

25 HEARING OFFICER FAY: Thank you for

1 that.

2 MR. SARVEY: I'm at a little bit of a
3 disadvantage because the witness here says that he
4 hasn't seen the information from the Department of
5 Toxic Substances Control. Is it possible to give
6 him a moment to review it so I can ask him the
7 questions related to the soil contamination and
8 the particulate matter issues?

9 HEARING OFFICER FAY: Yeah, we'll take a
10 minute. Let's go off the record.

11 (Off the record.)

12 MR. SARVEY: To identify this for the
13 record, this is the Department of Toxic Substances
14 Control March 20, 2006 letter to Bill Pfanner.
15 And if possible, I'd like to have it marked as an
16 exhibit.

17 HEARING OFFICER FAY: Okay, that will be
18 marked as exhibit 84.

19 BY MR. SARVEY:

20 Q The Department of Toxic Substances
21 Control here is asking for you to do a health risk
22 assessment, and it's stating: If sampling shows
23 contaminated soils are present, the potential
24 impacts associated with the excavation and
25 handling should also be addressed in the AFC. The

1 AFC should include an assessment of air impacts
2 and health impacts associated with the excavation
3 activities, identification of any applicable local
4 standards which may be exceeded by the excavation
5 activities, including dust and noise level, and
6 the transportation impacts from the removal or
7 remedial activities and the risk of upset."

8 Have you performed these assessments in
9 relation to worker health and safety?

10 MS. SOL : Your Honor, again, I'm going
11 to object. These are related to air impacts,
12 health impacts, local standards, which I assume
13 are health and safety standards exceeded by
14 excavation activities, transportation. I don't
15 see where the worker health and safety link is.

16 HEARING OFFICER FAY: Well, this is
17 not -- there's not an absolute bright line here.
18 And I think Mr. Sarvey is trying to develop a
19 connection between the workers disturbing the soil
20 and what may be in the soil. We're going to let
21 him go a bit. That's overruled. Go ahead.

22 MR. BUSHNELL: The question is whether
23 I've performed risk assessments addressing these
24 items?

25 MR. SARVEY: That the Department of

1 Toxic Substances is recommending here.

2 MR. BUSHNELL: I have, as they relate to
3 worker health and safety. I have not done an
4 assessment that relates to transportation modes,
5 but I have done air and health assessment risks
6 for risk assessments for excavation activities as
7 they relate to the workers on the site doing
8 remedial activities.

9 MR. SARVEY: And what did you conclude?

10 MR. BUSHNELL: Are you referring to this
11 specific site? Because that wasn't your previous
12 question.

13 MR. SARVEY: This specific site, or the
14 linear that the Department of Toxic Substances
15 Control is asking for you to --

16 MR. BUSHNELL: I have not made an
17 assessment for this particular site.

18 MR. SARVEY: Okay, thank you. That's
19 all I have.

20 HEARING OFFICER FAY: Anything further
21 at all, then, Mr. Sarvey?

22 MR. SARVEY: No, that's it, thank you.

23 HEARING OFFICER FAY: Anything further,
24 Ms. Sol,?

25 MS. SOL : No.

1 HEARING OFFICER FAY: Okay. All right,
2 we thank the panel. And we'll move to the staff
3 and ask that the witness be sworn.

4 MR. RATLIFF: The staff witness is Dr.
5 Alvin Greenberg.

6 Whereupon,

7 ALVIN GREENBERG
8 was called as a witness herein, and after first
9 having been duly sworn, was examined and testified
10 as follows:

11 THE COURT REPORTER: State and spell
12 your full name.

13 DR. GREENBERG: Alvin J. Greenberg; last
14 name is spelled G-r-e-e-n-b-e-r-g.

15 DIRECT EXAMINATION
16 BY MR. RATLIFF:

17 Q Mr. Greenberg, did you prepare the
18 testimony for worker safety in the staff FSA?

19 A Yes, I did.

20 Q And is it true and correct to the best
21 of your knowledge and belief?

22 A Yes.

23 Q Could you summarize it briefly for us,
24 and show us the slides that you apparently have?

25 A Yes. And the only mistake I made is I

1 put hazmat first, so I'll have to go through that
2 to get to worker safety/fire protection. There we
3 go.

4 My conclusion is very straightforward,
5 and that is that the applicant has demonstrated a
6 sufficient knowledge of their requirement to
7 protect workers during all phases of construction
8 and operation. And to provide adequate onsite
9 fire protection. And to insure that offsite fire
10 protection is, indeed, provided, and will not have
11 an impact on the local fire department.

12 Equipment at the San Francisco Fire
13 Department in the general area is listed here on
14 this slide. This was prepared by the applicant,
15 but I want to assure the Committee that I spoke
16 with Paul Chinn, the Fire Marshal of the San
17 Francisco City and County Fire Department. And he
18 assured me that this is, indeed, accurate.

19 And I asked him several questions
20 concerning whether he needs any additional
21 equipment. He says the Department is well aware
22 of how to fight a fire involving hazardous
23 materials and also at power plants. After all,
24 there have been power plants in San Francisco
25 operating.

1 The applicant's mitigation involves
2 worker safety and fire protection plans, the
3 construction safety and health program and an
4 operations and maintenance safety and health
5 program. These are also described in the first
6 two conditions of certification, and include
7 important provisions and protections for workers
8 during the construction period.

9 So, in partial answer to Mr. Sarvey's
10 question, here in worker safety/fire protection
11 there are programs that are required by Cal-OSHA,
12 and which will be required by conditions of
13 certification 1 and 2 that will protect workers.

14 I might add, also, that because there
15 is, indeed, some overlap on the protection of
16 workers from the contaminated soil on the site,
17 there's also provisions in the air quality
18 section, that would be conditions of certification
19 AQSC-3 and AQSC-4, that relate to fugitive dust
20 migration. And those also will not only protect
21 the public offsite, but will protect workers
22 onsite.

23 Furthermore, in the waste section, a
24 condition of certification will require the
25 applicant to develop a remedial action workplan.

1 Within a remedial action workplan there are
2 additional protections for workers dealing with
3 the removal action, or any type of remediation of
4 the site.

5 So, workers are protected in three
6 different locations of the staff final, the staff
7 final assessment. And there's at least three or
8 four different conditions of certification that
9 the City will have to follow in order to
10 adequately protect workers. And we will enforce
11 that, as I'll show you later.

12 Staff's mitigation has the first two
13 conditions of certification which will require
14 those, the construction safety plans and
15 construction fire protection. Worker safety-2
16 will require the operations plans. And worker
17 safety-3 will require the applicant to have a
18 construction safety supervisor to insure safe and
19 a healthy environment for all personnel, including
20 subcontractors.

21 Worker safety-4 will require the
22 applicant to provide for, and this would be
23 through funding of the CBO, the construction
24 building official, who reports to the CEC's
25 compliance project manager. So this individual, a

1 safety professional, will report directly to staff
2 here at the Commission to monitoring the onsite
3 compliance with Cal-OSHA regulations. Here is
4 another layer, another set of eyes, if you will,
5 to insure that workers on this site are indeed
6 protected.

7 That really concludes just the
8 highlights and overview of worker safety/fire
9 protection.

10 Q Mr. Greenberg, are you familiar with
11 what has just been marked as exhibit 84, the DTSC
12 letter of March 20, 2006?

13 A Yes, I am.

14 Q Does it change your conclusions in any
15 way?

16 A No, it does not.

17 Q Can you explain?

18 A Certainly. This letter was written by
19 someone in Region II of DTSC who was responding to
20 the notice of the change in the water pipeline
21 route. So now we're dealing with a 2600-foot
22 pipeline taking secondary treated water from a
23 location south and a little bit to the west of the
24 proposed site, and bringing it up to the site for
25 tertiary treatment.

1 In all honesty, that individual is a
2 little bit green, a little bit uncertain about
3 what type of letter to write to the Energy
4 Commission. We have received many letters from
5 DTSC on many siting projects over the years. And
6 this one, as you note, he recommended changing the
7 AFC. So that right away should tell you that he's
8 unfamiliar with procedures.

9 And normally what we do is we get a
10 letter, and first of all, it is advisory, it is a
11 recommendation. Second of all, this individual
12 was really unfamiliar with all the protections
13 that we have in place.

14 Now, he suggests that the applicant
15 prepare a health risk assessment. Well, we
16 actually go one step better. We don't have to
17 prepare a health risk assessment, we don't require
18 it simply because we know that if you're going to
19 excavate below an urban street to put in a
20 pipeline you're going to encounter hazardous
21 waste.

22 So, we tell them, you have to be
23 prepared for that. You have to protect your
24 workers. Assume that it's there.

25 These are not trenching and excavation

1 and pipeline workers who have never done this
2 before. These companies, whether they're laying a
3 gasline or a waterline, are very skilled, very
4 experienced, they know what they're doing.

5 Nevertheless, the City and County of San
6 Francisco, as the project owner, will still have
7 to comply with worker safety-1 and worker safety-
8 2, and their health and safety plan will have to
9 address the specific issue.

10 Second of all, we have a waste
11 management condition of certification, that I'll
12 explain in greater detail when we get to that
13 subject, but it says that you have to have a
14 professional, a registered geologist, an engineer,
15 somebody very well versed in encountering
16 hazardous waste in soils, on hand when there is
17 soil movement and excavation occurring. So that
18 if something comes to light, you encounter
19 something, you can stop work. He or she will
20 order appropriate investigation and testing and
21 make sure that everybody is protected.

22 HEARING OFFICER FAY: Offhand, do you
23 know the number of that condition, that waste
24 condition?

25 DR. GREENBERG: That would be waste-2, I

1 believe. I think we have Mr. Ratliff looking
2 quickly there. Mr. Pfanner. Did I leave it open
3 to that?

4 MR. RATLIFF: Right.

5 DR. GREENBERG: Look at waste-2 or -3.

6 MR. RATLIFF: Waste-2 would require if
7 contaminated soil is discovered onsite, that the
8 registered professional engineer or geologist
9 inspect and determine the need for sampling to
10 confirm the nature and extent of contamination.

11 DR. GREENBERG: That would be the one.

12 HEARING OFFICER FAY: Okay, thank you.

13 DR. GREENBERG: And so we, sometimes we
14 do this balancing act between what is called a
15 specification condition of certification or a
16 performance. And we prefer to go with the
17 performance standard, or condition of
18 certification.

19 You have to comply with these LORS to
20 protect your workers, whether it's a site or
21 whether it's a linear. And here's all the steps
22 you have to go through. But we don't come right
23 out and say, do A, B, C or D. They have to comply
24 with the laws that say do A, B, C or D.

25 So I feel that the workers are

1 adequately protected. That it's not necessary to
2 do a health risk assessment or take soil samples.
3 But we did ask the applicant to do a phase one
4 environmental site assessment.

5 We have done this before in other siting
6 projects. I can tell you that we had what we
7 called a modified phase one environmental site
8 assessment conducted by the applicant, that was
9 Sacramento Municipal Utility District, for the
10 SMUD Cosumnes project. That was 35 miles of
11 pipeline. And so we didn't have them conduct
12 sampling.

13 This is 2600 feet and we're certainly
14 not going to require them to do sampling. I know
15 what they're going to find there. Everybody knows
16 it. So they're going to have their workers
17 protected, and it's going to be done by a
18 competent organization that knows what it's doing.
19 There's going to be people overlooking this, and
20 we're going to have our own people out there
21 looking at it, too.

22 BY MR. RATLIFF:

23 Q Does that conclude what you had to
24 say --

25 A That concludes my answer to that one,

1 yes.

2 Q -- in that regard? Okay. Have you
3 anything else to add to your testimony at this
4 time?

5 A No.

6 MR. RATLIFF: Well, with that, I think
7 the witness is available for cross-examination.
8 And I would move the worker safety portion of the
9 FSA into evidence.

10 HEARING OFFICER FAY: Is there any
11 objection to receiving that into evidence?
12 Hearing none, we move that portion of exhibit 46
13 that includes Dr. Greenberg's worker safety and
14 fire protection testimony into the record.

15 And the witness is available for cross-
16 examination. Ms. Sol,?

17 MS. SOL : No questions.

18 HEARING OFFICER FAY: No questions. Mr.
19 Sarvey.

20 CROSS-EXAMINATION

21 BY MR. SARVEY:

22 Q Dr. Greenberg, 'afternoon.

23 A Good afternoon, Mr. Sarvey.

24 Q In your testimony it states that staff
25 has determined that the identity and

1 concentrations of contaminants at the site, if
2 unmitigated, will pose a significant risk to
3 construction workers, that's correct, is it not?

4 A That is correct.

5 Q And the --

6 A During construction. Does not pose an
7 unacceptable risk as it sits there today.

8 Q Okay.

9 A Only if it's disturbed.

10 Q Okay. So did you assess the air quality
11 impacts to construction workers for PM10 and PM2.5
12 levels that will occur during construction of the
13 project?

14 A No, I did not. There is a condition of
15 certification that will assess while it's
16 happening, and mitigate it while it's happening.

17 Q So you didn't examine the applicant's or
18 the staff's maximum concentrations of PM at the
19 fenceline and all those issues related to worker
20 safety?

21 A Well, Mr. Sarvey, right now there is no
22 soil disturbance on that site, so it would only be
23 hypothetical or predictive.

24 Q Um-hum.

25 A And I've seen enough predictive

1 calculations made at sites with similar or worse
2 contamination. So I have a general idea of what
3 could exist.

4 Q But you don't have any idea what kind of
5 maximum PM levels that these construction workers
6 would be encountering during their job?

7 A Is that with or without mitigation?

8 Q Either way.

9 A Oh, I would have an idea, both.

10 Q And what is it with mitigation?

11 A With mitigation? Oh, I believe that the
12 PM10 levels, and even the PM2.5 levels can be kept
13 well below 10 mcg/cubic meter.

14 Q And what level would you consider
15 unsafe?

16 A Well, there is no OSHA standard for PM10
17 or PM2.5. There is only a nuisance dust standard.
18 Certainly we are directing the applicant to
19 protect workers to a standard far below the OSHA
20 standard.

21 Q So, I asked you, did you have a minimum
22 PM level that you evaluated for worker safety?

23 A No. Mr. Sarvey, let me be clear that
24 it's not a minimum level. We don't want to see
25 any.

1 And at the first sign that there could
2 possibly be any, our monitor on the site, our
3 individual on the site will have them institute
4 further dust suppression methods.

5 We want to make sure we don't ever see
6 any dust plume which could then mean that there
7 is, indeed, some 2.5 or PM10.0 exposure. We don't
8 want to see anything.

9 So, you know, to say that there's a
10 minimum, yeah, we hope the minimum is zero.

11 Q And so the applicant and staff have both
12 prepared analyses that define the maximum
13 construction PM impacts that they expect from this
14 project. Have you reviewed those?

15 A No, I said we had not done that kind of
16 estimate because we don't want to stick to a
17 certain maximum or minimum level. We don't want
18 to see any, period.

19 Q So at this point we don't know what the
20 maximum --

21 A That would be allowed?

22 Q No. The maximum that these workers will
23 be exposed to.

24 A Hopefully the maximum will be the same
25 as the minimum, none.

1 Q Well, we're trying to protect the
2 workers here, Dr. Greenberg. You know, we kind of
3 would like to know what we can expect these
4 workers to be subjected to. And I would assume
5 that your analysis included that.

6 A My professional opinion is that they
7 won't be exposed at all.

8 Q Okay.

9 A To anything that we could measure or
10 see.

11 Q So you disagree with the applicant and
12 the staff's air quality analysis that projects PM
13 levels as high as 18 mcg/cubic meter?

14 A I hope we can do better than that.

15 Q Okay.

16 A That's their analysis, not mine.

17 Q Okay. So you really haven't done an
18 analysis of that nature. Okay.

19 MR. SARVEY: Thank you, that's all I
20 have.

21 HEARING OFFICER FAY: Anything further,
22 Mr. Ratliff?

23 MR. RATLIFF: No.

24 HEARING OFFICER FAY: Okay. All right,
25 thank you, Dr. Greenberg, appreciate that.

1 We have no other testimony on worker
2 safety and fire protection. I'll, just again, ask
3 if CARE is on the line to cross-examine any of the
4 witnesses on this. And I hear no indication.

5 So the next topic on our attachment A
6 that was included in the notice is traffic and
7 transportation. But, at the request of the
8 applicant, we have shifted that topic to May 1st.
9 So we'll move to land use.

10 MS. SOL : And I'm calling as a witness
11 Mr. Steven Smith.

12 HEARING OFFICER FAY: Please swear the
13 witness.
14 Whereupon,

15 STEVEN SMITH
16 was called as a witness herein, and after first
17 having been duly sworn, was examined and testified
18 as follows:

19 THE COURT REPORTER: Please state and
20 spell your full name for the record.

21 MR. SMITH: Steven H. Smith; last name
22 is S-m-i-t-h.

23 MS. SOL : Mr. Smith's qualifications
24 were contained in appendix A to the prehearing
25 conference statement of the City.

1 DIRECT EXAMINATION

2 BY MS. SOL :

3 Q Mr. Smith, do you have before you the
4 testimony of the City that was submitted on April
5 17th?

6 A I do.

7 Q Could you turn to page 19 and 20.

8 A Okay.

9 Q Okay. Under the introduction, see prior
10 filings, there's a list of documents there.
11 There's references to documents and partial
12 documents. Do you see that list?

13 A I do.

14 Q Are those the documents that you're
15 sponsoring here today?

16 A They are.

17 Q Do you have any corrections or
18 additions?

19 A I actually have one update to supplement
20 A, dated March 24, 2005.

21 Q Okay.

22 A Section 8.4.7 under cumulative impacts,
23 there's a reference to a application for Potrero
24 unit 7, which is noted as being suspended. My
25 understanding is that's been withdrawn.

1 Q Okay. And with that correction, to the
2 extent that there are facts in the documents, are
3 they true to the best of your knowledge?

4 A They are.

5 Q And with that correction, to the extent
6 that there are opinions expressed in those
7 documents, do they represent your professional
8 judgment?

9 A They do.

10 Q And do you adopt those documents as your
11 sworn testimony here today?

12 A I do.

13 MS. SOL : Your Honor, I'd like to move
14 for these documents to be entered into the record.

15 HEARING OFFICER FAY: Any objection?
16 All right, we move the documents labeled land use
17 from Mr. Steven Smith's testimony, page 19 of the
18 applicant's collected testimony, into the record.

19 MS. SOL : So Mr. Smith is available for
20 cross-examination.

21 HEARING OFFICER FAY: Staff, any
22 questions?

23 MR. RATLIFF: No.

24 HEARING OFFICER FAY: Mr. Sarvey.

25 MR. SARVEY: Yeah, I have a few.

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q Is this project included in the
4 industrial protection zone?5 A It's not. Are you referring to the
6 Resolution 1622?

7 Q Um-hum.

8 A It's not covered by that, actually.

9 Q Seems to be a lot of conflicts between
10 residential and industrial uses in the project
11 area. Can you kind of summarize what seems to be
12 the tug-and-pull going on there?13 A Well, I mean I would say that the area,
14 the existing land uses are predominately
15 industrial, if not overwhelmingly. At least in
16 the immediate vicinity.17 And the same is true for the planned
18 land uses, the zoning designations at the site and
19 in the site vicinity are for heavy manufacturing.
20 There is residential allowed within that zone,
21 however it's a conditional use that the City would
22 have to take a hard look at.23 Q So do you feel that the siting of the
24 SFERP may preclude some housing units going in?

25 A Not necessarily.

1 Q There seems to be a lot of development
2 in that area, also. Could you summarize some of
3 the major developments that are going on there?

4 A Well, there are several hundred units of
5 planned residential development in the vicinity
6 that have been either proposed or approved by the
7 City.

8 However, in the analysis no land use
9 impacts are anticipated from those proposed uses.

10 Q And how about industrial?

11 A There are some industrial facilities
12 planned, which are in character with the site, and
13 wouldn't result in any conflict with the proposed
14 project.

15 Q And what are they?

16 A My understanding there is a Muni
17 facility planned just immediately adjacent to the
18 site.

19 The other projects, there's some
20 concrete batch facilities that are planned in the
21 nearby vicinity. And no impacts would result --
22 compatibility impacts would result from that,
23 either.

24 Q And is there also some warehousing
25 planned there, also?

1 A I believe there is, yeah, in the nearby
2 vicinity. And similarly, there'd be no land use
3 impacts.

4 Q Are you familiar with the San Francisco
5 southern waterfront projects?

6 A Not specifically.

7 Q Not specifically. Okay.

8 MR. SARVEY: That's all I have, thanks.

9 HEARING OFFICER FAY: Okay. Ms. Sol,,
10 anything further?

11 MS. SOL : No.

12 HEARING OFFICER FAY: All right. Then
13 we'll move to the staff witness on land use.

14 MR. RATLIFF: Staff witness is Dave
15 Ramirez -- Flores, I'm sorry.

16 Whereupon,

17 DAVID FLORES
18 was called as a witness herein, and after first
19 having been duly sworn, was examined and testified
20 as follows:

21 THE COURT REPORTER: Please state and
22 spell your full name for the record.

23 MR. FLORES: David Flores, F-l-o-r-e-s.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MR. RATLIFF:

3 Q Mr. Flores, did you prepare the portion
4 of the staff FSA entitled land use?

5 A Yes, I did.

6 Q Is it true and correct to the best of
7 your knowledge and belief?

8 A Yes.

9 Q Do you have any changes to make in that
10 testimony?

11 A No changes.

12 Q Could you summarize it very briefly?

13 A Yeah. As indicated in staff's analysis,
14 the site consists of approximately four acres, and
15 is located within the central waterfront area of
16 the City and County of San Francisco.17 As indicated by prior testimony of the
18 applicant, immediately west of the project site,
19 is the San Francisco Municipal Railway, which is
20 the Muni. And it's currently under construction
21 on approximately 13 to 17 acres on 25th and
22 Illinois Streets. They're anticipating
23 construction to be completed within approximately
24 22 months or so.

25 Staff also reviewed the various general

1 plan policies that are listed in the general plan.
2 And also the central waterfront plan, which this
3 project is located within.

4 One of the major numerous policies that
5 staff reviewed, and there was quite a few that
6 dealt with the retention, expansion and protection
7 of industrial activities in the area, one of them
8 that was essential was objective one of the
9 central waterfront plan. Which is to strengthen
10 and expand land uses that are essential to the
11 economic potential of this area, and also policy
12 one, which encourages the intensification and
13 expansion of industrial and maritime uses.

14 Also this project, under the zoning, is
15 listed as M2, which is heavy industrial.

16 And during the proceedings for the
17 Potrero Power Plant project staff had questioned
18 whether or not this was an appropriate use based
19 upon the zoning code, which specifically cited
20 steam power plants.

21 And so during the Potrero project we
22 asked for an interpretation by the planning
23 director. On August 8th of 2001 the zoning
24 administrator did determine that this type of
25 plant proposed by the Potrero applicant, which was

1 Mirant at the time, is a permitted use in the M2
2 zone.

3 The zoning administrator further stated
4 that the other types of power plants would also be
5 permitted in M2 district, because that steam
6 reference is outdated due to the fact that the
7 code section hasn't been updated in some time.

8 The site is also within 40X height and
9 bulk zoning district, which imposes development
10 height restrictions to 40 feet. The project's
11 three exhaust stacks exceed the height criteria,
12 but the structures and equipment necessary for the
13 industrial operations are exempt, as long as they
14 do not contain separate floors. So, in other
15 words, it is consistent with the zone, and it will
16 not be a problem.

17 Currently there is the central
18 waterfront better neighborhood plan that's
19 currently under review by the local of the area.
20 And, as indicated, there has been discussions
21 regarding housing in the area. And that currently
22 is occurring back and forth with the community and
23 also the planning department.

24 There are pros and cons to allowing
25 housing in that area. There are concerns by the

1 community regarding the industrial aspect of the
2 waterfront area. And so at this point,
3 discussions are currently underway. The last
4 hearing was February of this past year where they
5 had a workshop and discussions regarding housing.
6 But there hasn't been a determination at this
7 point and discussions are ongoing.

8 As also indicated in staff's analysis,
9 the San Francisco Bay Conservation Development
10 Staff responded regarding the drainage facilities
11 that are within their jurisdiction. They did not
12 require any public access along the shoreline.
13 However, to meet the McAteer-Petris Act, BCDC
14 asked for future conveyance at the culvert
15 location, possibly for a bridge at a future date,
16 for bike pathways.

17 At this point that concludes staff's
18 analysis. Staff believes that this project is
19 consistent with the City's land use designation
20 and zoning for this site.

21 Furthermore, the project would not
22 disrupt or divide physical arrangements of an
23 established community. And, as indicated in the
24 staff's analysis, the project is surrounded by
25 industrial uses; and the project would not

1 preclude any restricted existing or planned uses
2 in the area.

3 And staff recommended three conditions
4 which were essentially based on the zoning code
5 dealing with sign and setback requirements.

6 Q Does that conclude your summary?

7 A Yes, it does.

8 MR. RATLIFF: Staff would make the
9 witness available for testimony, and move that his
10 portion of the FSA be admitted into the record.

11 HEARING OFFICER FAY: Any objection to
12 receiving the testimony of David Flores? All
13 right, that's admitted into the record at this
14 point.

15 And, Ms. Sol,, any questions?

16 MS. SOL : No.

17 HEARING OFFICER FAY: Mr. Sarvey, any
18 questions of the witness?

19 MR. SARVEY: Yes.

20 CROSS-EXAMINATION

21 BY MR. SARVEY:

22 Q You mentioned the Potrero 7 land use
23 assessment that staff did. Did you prepare that?

24 A Yes, I did.

25 Q You did? Okay. So you prepared Potrero

1 7 and you responded to the comments on that, as
2 well? That you received.

3 A Yes, I did.

4 Q Can you summarize some of the comments
5 that the City and County of San Francisco made
6 about the Potrero 7 project in relation to land
7 use?

8 MS. SOL : Your Honor, objection. It's
9 irrelevant; it was a different project.

10 HEARING OFFICER FAY: Sustained.

11 BY MR. SARVEY:

12 Q On your testimony on page 4.5-6,
13 cumulative impacts and mitigations.

14 A Yes.

15 Q You list quite a few projects here. Do
16 you know which one of these are completed, or
17 which ones are still under construction?

18 A As indicated, the Muni project is now
19 under construction. Pier 70 is still under
20 review. The last time I checked it on the
21 internet they are still -- there was a plan that
22 was submitted and it was rejected by the
23 community. And so they're starting all over again
24 through the bidding process, and also modifying
25 their plan for their Pier 70 project.

1 Mission Bay is still under construction.
2 And I have no idea at this point when it's
3 anticipated for final construction of that.

4 And, of course, I mentioned the Hunter's
5 Point project.

6 Q And then you have the Port of San
7 Francisco waterfront land use plan. Can you
8 discuss what's going on with those projects?

9 A Yeah. Under the -- this is, as I
10 indicated earlier, it's part of a subset of the
11 waterfront plant, where there are existing -- the
12 existing community has been meeting with the City
13 and County of San Francisco to determine do we
14 need additional housing in our area. How far do
15 we want to intensify into the industrial areas.

16 And so these discussions are currently
17 ongoing at this point. There was a draft that was
18 submitted, and I'm on their mailing list. And so
19 it looks like February 23rd was the -- there was a
20 document available for the community to review.

21 Q You mention in your testimony on page
22 3.4-8 a Concrete ReadyMix facility. Is that under
23 construction?

24 A One is completed; the other one will be,
25 was anticipated to be done this month.

1 Q My understanding there's plans for
2 expansion on both of those, is that correct?

3 A I have not heard that.

4 Q Okay. And there's also a bulk cargo
5 barge and rail transport at Pier 80?

6 A I wasn't aware of that.

7 Q Okay. It's in your testimony on page
8 4.5-8.

9 A Oh, forgot.

10 Q The Pier 90-94 backlands is a 44-acre
11 site. Can you tell us where they are with the
12 development of that project?

13 A Just to go back on that one, that is the
14 one that has been completed.

15 Q Okay.

16 A And the other one is -- there's another
17 one --

18 Q How recently was that completed?

19 A Six months, seven months ago.

20 Q Okay, thank you. And then the Pier 90-
21 94 backlands 44-acre site, that's still in the
22 initial planning phase?

23 A Yes, it is.

24 Q Okay, and then the Pier 70 opportunity
25 area --

1 A That's the one I mentioned earlier.

2 Q Okay. So basically all these projects
3 that you list you consider reasonably to be
4 foreseeable land use projects?

5 A Yes, I do.

6 Q Okay.

7 MR. SARVEY: That's all I have, thank
8 you.

9 HEARING OFFICER FAY: Anything further,
10 Mr. Ratliff?

11 MR. RATLIFF: No.

12 HEARING OFFICER FAY: All right, thank
13 you, Mr. Flores, you're excused.

14 CARE indicated that they wanted to
15 cross-examine on land use. Is CARE on the line?
16 All right, still no indication.

17 The next topic is hazardous materials
18 management. And it indicated in the notice,
19 excluding ammonia issues. By that, what we meant
20 was ammonia issues related to ammonia slip in the
21 air pollution control system. So we will deal
22 with transport and storage of ammonia onsite under
23 hazardous materials today.

24 Ms. Sol,.

25 MS. SOL : Yes, Your Honor. I'm going

1 to be calling as a witness Ms. Karen Parker. In
2 addition, we had a supplement in the hazardous
3 material area addressing Mr. Sarvey's testimony
4 that is more of a design technical issue. And so
5 we have Mr. Brock available to make that update to
6 that section.

7 HEARING OFFICER FAY: Okay. Has the
8 supplement been served upon the parties?

9 MS. SOL : They were going to make a
10 statement as an addition to their -- well, Ms.
11 Parker was going to make a statement as an
12 addition to her testimony, much as Mr. Flynn did.
13 And we were going to have Mr. Brock do the same
14 thing. It's one of these cross-over issues.
15 It's --

16 HEARING OFFICER FAY: Okay.

17 MS. SOL : -- addressing Mr. Sarvey's
18 testimony.

19 HEARING OFFICER FAY: Okay.

20 MS. SOL : So, Ms. Parker.
21 Whereupon,

22 KAREN PARKER
23 was called as a witness herein, and after first
24 having been duly sworn, was examined and testified
25 as follows:

1 THE COURT REPORTER: Please state and
2 spell your full name.

3 MS. PARKER: Karen Parker, K-a-r-e-n
4 P-a-r-k-e-r.

5 MS. SOL : Ms. Parker's qualifications
6 are contained in appendix A to the prehearing
7 conference.

8 DIRECT EXAMINATION

9 BY MS. SOL :

10 Q Ms. Parker, do you have before you the
11 testimony that the City submitted on April 17th?

12 A Yes, I do.

13 Q Do you have before you the list in
14 introduction, prior filings, a list of documents?

15 A Yes, I do.

16 Q Are those the documents that you're
17 sponsoring here today?

18 A Yes, they are.

19 Q And do you have any corrections or
20 additions to make to those documents?

21 A Yes, I do.

22 Q Could you please go ahead and make those
23 for the record.

24 A I have two different types of additions.
25 I have corrections to typographical errors in my

1 testimony. On page 31, section Roman numeral II,
2 proposed licensing conditions. Under the first
3 paragraph the number of conditions of
4 certification were misnumbered, so --

5 Q Ms. Parker, could you please tell us
6 which document and which exhibit number?

7 A This is my testimony that we were just
8 referring to --

9 Q Okay.

10 A -- just after the introduction --

11 Q Okay.

12 A -- and the prior filings.

13 Q Yes.

14 A -- that I just swore to. It's II,
15 proposed licensing conditions. First paragraph,
16 first sentence states: The FSA for the project
17 recommends nine conditions of certification. And
18 then numbered them haz-1 through haz-8; that
19 should be through haz-9.

20 Second sentence says that haz-1 through
21 haz-9 are acceptable. That should read haz-1
22 through haz-8 are acceptable.

23 Then we went on to propose revisions to
24 haz-9. And the remaining is accurate. I have no
25 changes.

1 In addition to that change I have a
2 response to Mr. Sarvey's prefiled testimony,
3 exhibit 77, that was submitted on April 17, 2006.
4 Specifically in response to two recommended
5 conditions of certification he proposed.

6 Haz-3, his proposed condition, is: In
7 the event the project owner shall use aqueous
8 ammonia, the aqueous ammonia concentrations will
9 be limited to 20 percent by volume.

10 The City's response is that the
11 applicant has proposed the use of 29 percent
12 solution of aqueous ammonia at the SFERP for air
13 pollution control purposes.

14 In support of the application for
15 certification an offsite consequence analysis, OCA
16 for short, was performed to assess the potential
17 impacts of a catastrophic release of ammonia on
18 the public. The OCA used modeling to simulate air
19 dispersion of a plume of ammonia from a worst case
20 release event. Worst case would be release of the
21 full volume of the ammonia storage tank. With the
22 concurrent failure of a secondary containment
23 system designed to hold the release.

24 The nature of the OCA was conservative.
25 The results of this conservative OCA indicate that

1 even in the event of a catastrophic release at the
2 fencelines for areas accessible to the public,
3 ammonia concentration levels will be below 5 parts
4 per million.

5 These results indicate that even with
6 the use of 29 percent aqueous ammonia, in the
7 event of a catastrophic release, the ammonia plume
8 would not impact public receptors. And that the
9 risk posed to the local community from storage of
10 aqueous ammonia at the site is insignificant.

11 The offsite consequences of release of
12 19 percent aqueous ammonia would not be
13 significantly less than those of a release of 29
14 percent ammonia.

15 Comparisons between the use of 29
16 percent and 19 percent aqueous ammonia have been
17 made at other power plants in the distance at
18 which a significant impact has been measured at 19
19 percent ammonia, has been reduced by only a few
20 feet.

21 Furthermore, the quantity of ammonia
22 that will be needed for operation will not be
23 reduced by a change in concentration of the
24 aqueous solution. In other words, a larger
25 quantity of lower concentration of the solution

1 will be needed to achieve the same effect on the
2 process.

3 Therefore, the advantages to the
4 applicant of using a 29 percent solution instead
5 of a 20 percent or less solution are lower costs
6 to operate the facility due to the purchase of
7 less water and more material that can be used in
8 the process. And secondly, the need for fewer
9 deliveries of ammonia to achieve the same mass of
10 material.

11 In response to haz-4, which was Mr.
12 Sarvey's proposed condition of certification that
13 stated: The project will be designed so that the
14 ammonia concentrations will not exceed 35 parts
15 per million at the fenceline of the property to
16 comply with DPH design guidelines.

17 The City's response is the applicant has
18 designed the project to achieve ammonia
19 concentrations of 35 parts per million at the
20 fenceline for areas that are accessible to the
21 public.

22 In fact, as stated above, at the
23 fencelines accessible to the public, even in the
24 event of a catastrophic release, ammonia
25 concentrations will be below 5 parts per million.

1 The City recognizes that on the western
2 boundary of the site, the modeled concentrations
3 will be higher than 35 parts per million.
4 However, the property to the west of the plant
5 site is also City property, and it will not be
6 accessible to the general public.

7 Access will be restricted to employees
8 of the Muni facility. As City employees,
9 employees of the Muni facility will be trained to
10 respond to a release of ammonia from the storage
11 tank via evacuation of the facility. There will
12 be adequate time available to perform an
13 evacuation before dangerous concentrations of
14 ammonia become present at the Muni site.

15 The ammonia storage tank will be
16 designed with level sensors and alarms to monitor
17 for releases and warn City employees at both the
18 plant site and the Muni site of a release.

19 Q Then we had some -- actually, why don't
20 we finish up with -- with those changes and
21 additions, are the facts contained in the
22 documents and portions of documents listed in your
23 testimony true to the best of your knowledge?

24 A Yes, they are.

25 Q And to the extent there are opinions in

1 those documents, do they represent your
2 professional judgment?

3 A Yes, they do.

4 Q And do you adopt those documents as your
5 sworn testimony at this time?

6 A Yes, I do.

7 MS. SOL : And could Mr. Brock now make
8 his response to Mr. Sarvey's testimony?

9 HEARING OFFICER FAY: Yes.

10 Whereupon,

11 STEVEN BROCK

12 was recalled as a witness herein, and having been
13 previously duly sworn, was examined and testified
14 further as follows:

15 DIRECT TESTIMONY

16 MR. BROCK: This is in response to Mr.
17 Sarvey's April 17, 2006 testimony, exhibit 11.
18 And this is in response to Intervenor Haz-2. Mr.
19 Sarvey said: In the event aqueous ammonia is used
20 in the project owner will utilize a double-wall
21 tank or an underground storage tank."

22 I respond thus: The use of a double-
23 wall tank for above-ground ammonia storage tank
24 would not eliminate the need for a containment
25 basis nor alter the results of the offsite

1 consequence analysis.

2 The worst case assumption regarding
3 ammonia release is a complete rupture of the tank,
4 whether single- or double-walled. Typically
5 double-wall tanks are employed to catch minor
6 leaks from the main storage tank, or the volume
7 enter the space in between the two walls, and to
8 detect this leakage so that appropriate mitigation
9 can be taken.

10 This is the most commonly utilized for
11 the protection of the environment for underground
12 storage tanks of hazardous materials, where a leak
13 would not otherwise be detected. And that the
14 plant can respond to the leakage from the inner
15 tank.

16 The use of -- I am not aware of the use
17 of a double-wall tank material in the outer shell
18 to forestall the complete rupture of an air-wall
19 tank.

20 The use of an underground tank would
21 require the utilization of a double-wall tank, as
22 discussed above. In addition, a separate
23 containment system would have to be utilized to
24 contain the release of ammonia during the
25 unloading procedure. The volume of this

1 containment system would only be slightly smaller
2 than the containment system for the above-ground
3 storage tank.

4 I am not aware of any power plants with
5 double-walled storage tanks nor underground
6 storage tanks for the storage of aqueous ammonia.

7 MS. SOL : And, Your Honor, I apologize.
8 Apparently Ms. Parker had one further addition to
9 her testimony in response to Mr. Sarvey.

10 MS. PARKER: Thank you. Mr. Sarvey's
11 same exhibit, 77, also commented on transportation
12 study that had been done. Contrary to Mr.
13 Sarvey's statement in exhibit 11 of his testimony,
14 the City did perform a transportation risk study.

15 An analysis was performed by the City of
16 the risk of a transportation accident during
17 delivery of hazardous materials including but not
18 limited to aqueous ammonia to the SFERP facility.
19 The study focused on the risk during
20 transportation on surface streets in the vicinity
21 of the plant site, as there is greater potential
22 for accidents to occur on non-highway roads than
23 on highways.

24 Furthermore, the exact locations of
25 suppliers of hazardous materials to be used at the

1 SFERP facility are not yet known, so complete
2 transportation routes could not be included in the
3 study.

4 Risk was determined by calculating the
5 distance of the project site from the highway 101
6 freeway offramp and applying a risk probability
7 using established literature on the subject,
8 specifically Davies and Lees 1992 and Hargrove, et
9 al, 1990.

10 The study is the planned number of
11 deliveries of aqueous ammonia, up to 14 per year,
12 and the distance from highway 101 to the plant
13 site, to calculate the annual distance traveled,
14 assuming the highest accident probability provided
15 -- I'm sorry, to calculate the annual distance
16 traveled by delivery trucks.

17 The analysis then applied an accident
18 probability to the annual distance traveled,
19 assuming the highest accident probability provided
20 in the literature, which was for undivided
21 roadways. This assumption increased the
22 calculated transportation risk beyond the likely
23 actual level, as some of the roadways to be used
24 for truck deliveries are divided roadways, which
25 have lower accident probabilities.

1 Ammonia is the most toxic of the
2 hazardous materials to be used at the site. It
3 will be used in relatively large quantity compared
4 with other materials, and will require more
5 frequent deliveries than most of the other
6 materials.

7 The largest quantity of hazardous
8 material that will be used at the site is actually
9 21,000 gallons of transformer insulating oil,
10 which is mineral oil. But it is far less
11 hazardous and it's not consumed in the process, so
12 it is not expected to contribute much to the
13 transportation risks, due to both its lack of
14 hazardous characteristics and the infrequency of
15 delivery.

16 All hazardous materials to be delivered
17 to the site will be shipped in containers approved
18 by the U.S. Department of Transportation, DOT, in
19 compliance with Title 49 requirements of the Code
20 of Federal Regulations.

21 The results of the transportation study
22 were compared to the significant thresholds used
23 by the California Energy Commission for fatalities
24 and were determined to be well below the
25 thresholds.

1 In addition, data from the U.S.
2 Department of Transportation was included in the
3 study. DOT's statistics on serious accidents,
4 which are defined as a fatality or major injury,
5 closure of a major transportation artery or
6 facility, incident resulting in the evacuation of
7 six or more persons, or incident resulting in the
8 release of hazardous materials show that 417
9 serious incidents occurred in 1997 for all modes
10 of hazardous materials transportation out of a
11 total of 11,750 highway incidents.

12 Thank you, that concludes my additions.

13 MS. SOL : And so I would like to move
14 for the -- to enter the documents listed adopted
15 by Ms. Parker into the record.

16 HEARING OFFICER FAY: All right. Is
17 there any objection? So moved.

18 MS. SOL : And the witnesses are
19 available for cross-examination.

20 HEARING OFFICER FAY: Both Mr. Brock and
21 Ms. Parker.

22 MS. SOL : Yes. Well, Mr. Brock, as to
23 his statement.

24 HEARING OFFICER FAY: Okay. Mr.
25 Ratliff, any questions?

1 MR. RATLIFF: No.

2 HEARING OFFICER FAY: Mr. Sarvey.

3 MR. SARVEY: Yes. This is for Ms.
4 Parker.

5 CROSS-EXAMINATION

6 BY MR. SARVEY:

7 Q You stated that Department guidelines of
8 a 35 ppm at the fenceline only applies when
9 there's public present, is that correct?

10 A I don't believe I stated that.

11 Q So what are the Department of Health
12 guidelines, as far as the design criteria, at 35
13 ppm at the fenceline?

14 A I'm afraid I don't understand the
15 question.

16 Q The Department of Health has a standard
17 for risk management plans that all new risk
18 management plans must have a design guideline of
19 35 ppm for ammonia at the fenceline. That's my
20 understanding. I mean if the public's not present
21 that doesn't apply or?

22 A I would have to know the definition of
23 the fenceline and more details. I'm not aware of
24 this requirement.

25 Q You're not aware of this requirement?

1 A No.

2 Q Didn't you just rebut my testimony
3 saying that you were going to have a design
4 guideline of 5 ppm everywhere but at the Muni
5 Metro facility?

6 A Yes.

7 Q Okay, so there is a design guideline of
8 35 ppm at the fenceline, that's correct, is it?
9 Or is it not?

10 A I was rebutting your testimony.

11 Q Right. And I'm asking you, is there a
12 design guideline from the Department of Health,
13 when you prepare a risk management plan, that
14 ammonia concentrations cannot exceed 35 ppm at the
15 fenceline? That is a design guideline from the
16 Department of Health according to my
17 understanding. That's in my testimony.

18 A I'm not aware of it.

19 Q You're not aware of that? I'd like to
20 draw your attention to your testimony on appendix
21 8.12A of exhibit 15.

22 Okay, your analysis in appendix 8.12A,
23 table 2, exhibit 15 uses the SLAB model to model
24 offsite consequences, isn't that correct?

25 A Yes.

1 Q Okay. And any risk management plan that
2 is administered under the San Francisco Department
3 of Public Health requires the use of the RMP comp
4 method to evaluate the offsite consequences of an
5 ammonia release, isn't that true?

6 A Not to my knowledge. Not for offsite
7 consequences analysis.

8 MR. SARVEY: Does the applicant have
9 anybody that's familiar with the LORS of the
10 Department of Public Health?

11 MS. SOL : I believe you asked some
12 questions and there are certain data responses.

13 MR. SARVEY: Right, but do you have
14 someone that can -- I'm asking questions about
15 your LORS, and they don't seem to be -- I asked
16 whether you have a 35 ppm design guideline. I
17 asked whether you're required to use the RMP comp
18 method. And I haven't got an answer on either
19 one, so I was just asking do you have someone
20 available. I requested Richard Lee at the
21 prehearing conference statement -- I mean at the
22 prehearing conference.

23 MS. PARKER: I can comment that the RFP
24 comp guideline was not used because it's less
25 conservative than the SLAB method. If that's

1 helpful.

2 BY MR. SARVEY:

3 Q It's less conservative?

4 A Yes.

5 Q So if we used RFP comp then the --

6 A I'm sorry, I shouldn't have said less
7 conservative. It's more general, it's more
8 simplistic. The SLAB method is considered to be
9 more accurate.

10 Q Okay, so you're not aware that the RFP
11 comp method is required by the San Francisco
12 Department of Public Health for a risk management
13 plan? Is that your answer, that's correct?

14 A Well, we have not prepared a risk
15 management plan at this point.

16 Q Okay, you have prepared an offsite
17 consequences --

18 A So we --

19 Q -- analysis, though?

20 A Right, exactly. For the purpose of
21 supporting this application.

22 Q And when you do prepare your risk
23 management plan you intend to use the RFP comp
24 method, is that correct?

25 A If that will be required by the City,

1 yes, we will.

2 Q Okay. So in your testimony on page 2 --

3 A Of the same exhibit?

4 Q -- excuse me, same exhibit, and it's on
5 page 4, I'm sorry. You estimate, when you use the
6 RMP comp, that the toxic end point of 200 ppm is
7 528 feet from the ammonia containment structure,
8 is that correct?

9 A This is on page 2 you're referring me --

10 Q Page 4.

11 A Page 4, I'm sorry.

12 Q Second paragraph below the table.

13 A And could you repeat the question?

14 Q Your RMP comp method was utilized here,
15 according to your testimony, and it yielded a end
16 point of 200 ppm concentration 528 feet from the
17 release point, is that correct?

18 A Yes, it appears to be.

19 Q Okay, and the method that you used
20 yielded a 200 ppm concentration at about 30 meters
21 or 100 feet, is that correct? That would be in
22 table 2.

23 A Yes.

24 Q Okay. So, using the preferred RMP comp
25 method that you're going to use in your risk

1 management plan, the ammonia concentrations will
2 be well above 200 ppm at the fenceline, won't
3 they?

4 A Yes.

5 Q So the public could be exposed to
6 ammonia concentrations well above 200 ppm using
7 the Department of Health method, that's correct?

8 A Well, I don't -- I'm not sure I can
9 totally agree with that statement that they will
10 be exposed to those levels, because these are
11 calculating --

12 Q But you just stated --

13 A -- potential consequences --

14 Q -- you --

15 HEARING OFFICER FAY: Don't talk over
16 the witness. Let her finish the --

17 MR. SARVEY: I apologize.

18 HEARING OFFICER FAY: Go ahead.

19 MS. PARKER: Maybe if you could restate
20 your question, I'm not sure I understand.

21 MR. SARVEY: That's okay, we'll just
22 drop that question. I'll withdraw it.

23 BY MR. SARVEY:

24 Q Your HMUPA, which is your risk
25 management plan, requires the worst case scenario

1 where ammonia tank and tanker truck both
2 experience catastrophic failure, doesn't it?

3 A For the risk management plan?

4 Q Yes.

5 A Well, that hasn't been prepared yet.

6 Q So your hazardous materials unified
7 program agency document for the risk management
8 plans requires you to model both the worst case
9 scenario where the ammonia tank and the tanker
10 truck both experience catastrophic failure,
11 correct?

12 A But we haven't prepared the HMUPA --

13 Q I understand that. I'm asking you do
14 your LORS require such?

15 A Whatever the LORs require will be
16 complied with when we compare the risk -- when we
17 prepare the risk management plan. At this point
18 the study was done in support of this application.

19 Q And your transportation analysis that
20 you spoke of previously, did you do a cumulative
21 transportation analysis of hazardous materials to
22 all facilities in the project area? Or did you
23 just do it to the SFERP?

24 A Delivery of materials to all facilities
25 in the project area?

1 Q All materials (sic) that store hazardous
2 materials in the project area.

3 A No, we did it to determine the impact of
4 this project.

5 Q Just this particular project, okay,
6 thank you.

7 MR. SARVEY: That's all I have for Ms.
8 Parker.

9 HEARING OFFICER FAY: Anything for Mr.
10 Brock?

11 MR. SARVEY: Yeah.

12 CROSS-EXAMINATION

13 BY MR. SARVEY:

14 Q Mr. Brock, you mentioned to your
15 knowledge that there was no facilities, power
16 plants that used underground storage, is that
17 correct? Or did I misinterpret what you said?

18 A I am not aware of any power plants that
19 use underground storage tanks for the storage of
20 ammonia.

21 Q You're not aware of any?

22 A No, I'm not.

23 Q Okay, thank you.

24 MR. SARVEY: That's all for Mr. Brock.

25 HEARING OFFICER FAY: Anything further,

1 Ms. Sol,?

2 MS. SOL : I'd like to confer for a
3 minute with my witness.

4 HEARING OFFICER FAY: Sure.

5 (Pause.)

6 REDIRECT EXAMINATION

7 BY MS. SOL :

8 Q Ms. Parker, I have one question. You
9 were asked questions about the offsite consequence
10 analysis. Is it your opinion that the offsite
11 consequence analysis that you are sponsoring is
12 legitimate and appropriate for purposes of this
13 stage of the proceedings?

14 A Yes.

15 Q And can you explain why?

16 A I feel that this is done using the
17 traditional Energy Commission-approved
18 methodology, using standard modeling techniques
19 that we've used for other power plants that have
20 been licensed in the State of California.

21 MS. SOL : No further questions.

22 HEARING OFFICER FAY: Any recross?

23 MR. SARVEY: Please.

24 //

25 //

1 RECROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q Does this analysis that you performed
4 here comply with the requirements that you're
5 going to have to comply with for your risk
6 management plan that you're going to be preparing?

7 A We may be required to use different
8 modeling methodology for the risk management plan.

9 MR. SARVEY: Thank you.

10 HEARING OFFICER FAY: Okay. All right,
11 we thank the panel. And we'll move to the staff
12 testimony on hazardous materials.

13 MR. RATLIFF: The staff witness is Dr.
14 Alvin Greenberg. He has been sworn.
15 Whereupon,

16 ALVIN GREENBERG
17 was recalled as a witness herein, and having been
18 previously duly sworn, was examined and testified
19 further as follows:

20 DIRECT EXAMINATION

21 BY MR. RATLIFF:

22 Q Mr. Greenberg, did you prepare the
23 portion of the staff analysis called hazardous
24 materials management?

25 A Yes, I did.

1 Q Is that testimony true and correct to
2 the best of your knowledge and belief?

3 A Yes.

4 Q Do you have any corrections to make in
5 it?

6 A Yes, I do, two.

7 Q Could you explain those?

8 A One would be on page 4.4-13. It would
9 be the last paragraph and the first sentence. The
10 following words got left out in the first sentence
11 after the phrase, "would not be reached at any
12 offsite location." So, please add: with the
13 exception of 10 to 13 feet beyond the western
14 fenceline (the Muni site)."

15 Somehow those words got left out. The
16 modeling, however, does show that. And I
17 apologize to anybody for any confusion.

18 Q Is there any other change? Or does that
19 complete your changes?

20 A There is a change in a condition of
21 certification. If we go to condition of
22 certification haz-9, and we go all the way to the
23 end to number 10, the City has proposed that they
24 be given an option to monitor the facility from a
25 distance as opposed to having either 24-hour

1 guards on station 24/7 or having employees there
2 at all times.

3 Staff agrees that with a peaker plant
4 this would be appropriate. Indeed, there are
5 three peakers in the State of California right now
6 that have similar monitoring provisions. I
7 visited one of them and have seen that it works.

8 And so we make the following change to
9 our proposed condition of certification. And that
10 would be under number 10 there, strike the words
11 under 10B: Power Plant personnel onsite 24 hours
12 per day, seven days a week," and leave in the
13 words "all of the following."

14 And number 1 under 10B would still
15 remain the same. Number 2 would remain the same.
16 And number 3 would be added to read: The ability
17 to monitor the facility from a remote location
18 including monitoring CCTV views of the perimeter,
19 perimeter breach detectors or motion detectors,
20 and fire detectors."

21 We also propose changing the
22 verification in haz-9 to add the following after
23 the words "at least 30 days." It would read after
24 that: Prior to receiving any hazardous material
25 onsite for commissioning or operations," and then

1 continue on with the project owner shall notify
2 the CPM that a site-specific vulnerability
3 assessment and operation site security plan are
4 available for review and approval.

5 We think that makes it more clear. This
6 was the City's suggestion, and we concur, that it
7 does clarify that we're talking about hazardous
8 materials for commissioning and operations and not
9 for construction. Construction would have its own
10 construction security plan.

11 Q Does that complete your changes?

12 A Yes, it does.

13 Q Could you summarize your testimony for
14 us and show us the slides that you intend to show,
15 if you do intend to show some?

16 A Just a few. My conclusion is that the
17 City complies -- implements, rather, their
18 proposed mitigation measures and accepts and do
19 adopt the conditions of certification proposed by
20 staff, the use, storage and transportation of
21 hazardous materials at this proposed power plant
22 would be without a significant risk to workers or
23 the public.

24 Applicant's mitigation consists of a
25 number of approaches. There are engineering

1 controls, some of which are listed here. There
2 are administrative controls such as training. And
3 there's onsite spill response, and there'll be
4 offsite spill response from San Francisco Fire
5 Department, as well as contractors.

6 Site security will also aid in the
7 control of the transportation of hazardous
8 materials. These are the new regulations that
9 went into effect about a year and a half ago. One
10 of only two regulations to come out of the
11 Department of Homeland Security. Everything else
12 in security in the United States is still
13 voluntary. And they're having problems with the
14 voluntary.

15 But this would require the project owner
16 here to insure that their vendors will also
17 provide for background checks, as well as a risk
18 assessment and risk management plan for hazardous
19 materials vendors. So the City will have to
20 insure, through contractual language -- and by the
21 way, we do have suggested contractual language
22 when it comes time for that, if you'd like some,
23 but you're certainly free to use your own -- to
24 insure that the hazardous materials deliveries are
25 indeed in compliance with federal law on security.

1 One of the unique aspects of staff's
2 assessment was this was the first time that we
3 conducted a thorough review of the cumulative
4 impacts of hazardous materials use in a
5 neighborhood surrounding a proposed power plant.

6 I looked at a number, I'm thinking
7 somewhere around 50 or 60, different facilities,
8 some of which were even beyond our defined one-
9 mile radius impact zone, that used hazardous
10 materials, or that use.

11 We looked at RMPs, we looked at
12 hazardous materials business plan filings, and
13 there is a list of more than 30 facilities that I
14 decided to review in depth.

15 Here is a map showing our one-mile
16 radius. And this shows about 32 or 33 facilities.
17 And as you can see, some of them are considerably
18 beyond the one-mile, we call it the one-mile
19 limit. Down here there's the San Francisco
20 Southeast Treatment Plant.

21 After looking at these 32 or 33 in
22 greater depth it was determined that really there
23 was only one facility that stored hazardous
24 materials that we thought was worthy of a
25 quantitative assessment to see whether or not a

1 concurrent release of hazardous materials at the
2 SFERP facility and this other facility could
3 possibly have plumes that commingled at a
4 significant level of risk so that there would be
5 additive effects.

6 And, of course, we looked at aqueous
7 ammonia from the SFERP facility, and we looked at
8 the aqueous ammonia at the Mirant Potrero
9 facility. We used the new HARP model. This is
10 the ARB-developed hotspots analysis and reporting
11 program, which allows the input of various
12 sources.

13 As I will show you in the public health
14 discussion, we did a cumulative -- a quantitative
15 cumulative public health risk assessment where we
16 put in over 25 or 30 different sources. In this
17 case we just looked at two. And this is a hazard
18 index circle.

19 The 75 part per million standard that
20 the CEC uses as its benchmark, as our benchmark
21 for determining whether or not the public or
22 workers would be so incapacitated by a release
23 that it would impair their ability to escape or
24 get out of the area.

25 And this is the circle for the 75 parts

1 per million; and here's the one from Mirant. And
2 as you can see, even larger areas of lower
3 concentration do not overlap.

4 There were not other facilities that we
5 thought the plumes could overlap at a significant
6 level. These don't, at all overlap at any level
7 of significance. They would overlap at perhaps
8 maybe .1 or .2 parts per million, which is even
9 below the odor threshold.

10 So, even if there were a release and the
11 wind just happened to be blowing in the direction
12 of this way, and then all of a sudden it shifted
13 and blew that plume that way, which is almost an
14 impossibility, you wouldn't even be able to smell
15 ammonia from either one of these.

16 So, this is truly a worst case analysis,
17 because, of course, if you get a concurrent
18 rupture the wind's got to be blowing in one
19 direction. It's not going to suddenly shift and
20 blow them together.

21 Nevertheless, this is a demonstration
22 not only of the utility of the HARP model, but
23 also the level of effort that we went through to
24 assess cumulative impacts. And we found that
25 there would not be cumulative impacts.

1 What we found is something that we had
2 assumed and had used qualitatively in previous
3 siting cases, and that was the impacts from a
4 hazardous materials release, with a very few
5 exceptions, are very very close in. And even with
6 aqueous ammonia, the distance here is still
7 measured in a matter of feet, you know, 56 feet,
8 to be specific, as opposed to yards or hundreds of
9 feet or thousands of feet.

10 So you'd have to have another facility
11 literally with another tank right next to it for
12 there to be any type of significant cumulative
13 impact.

14 That would conclude my direct testimony
15 on hazardous materials.

16 Q Mr. Greenberg, are you familiar with the
17 testimony filed by Mr. Sarvey in this case -- I'm
18 sorry, Dr. Greenberg.

19 A Either way, I am.

20 Q One of the statements made in Mr.
21 Sarvey's testimony is that there is no analysis of
22 cumulative transportation risks. Could you
23 address that issue for me, please.

24 A I'd be happy to. First of all, just as
25 the City had conducted a transportation risk

1 assessment, I conducted a transportation risk
2 assessment, and I focused on aqueous ammonia
3 because in my experience that was the substance
4 that could possibly cause injuries or death,
5 should there be a release during a transportation
6 incident.

7 We essentially did it three different
8 ways. We looked at some approaches that others
9 had used in the past. We looked at our own
10 approach using the Harwood data that the City's
11 expert had alluded to, which looked at actual
12 accidents that resulted in releases from hazardous
13 materials trucks. And we also looked at the real
14 data, the real-life experience.

15 The first approach would use Caltrans
16 data of all truck accidents. They don't have it
17 broken down into hazardous material trucks, so it
18 would include, if there was an accident on a
19 particular highway or interchange or street, it
20 would include your Uncle Joe taking garbage to the
21 dump in his pickup truck. It would include a
22 FedEx driver. It would include a pizza delivery
23 truck.

24 We didn't think that that was really the
25 best data set to look at. So, when we looked then

1 at the Harwood study that addressed actual
2 hazardous materials, we could calculate a risk
3 based on that, but keep in mind that included all
4 hazardous materials. Harwood did not divide it up
5 into those, you know, in liquid form or solid form
6 or gaseous form. Nor did he make any distinction
7 that it was a DOT, a Department of Transportation,
8 certified, high integrity, stainless steel truck,
9 a tanker truck, that the applicant will have to
10 direct a vendor to use in order to deliver aqueous
11 ammonia or any other hazardous material in liquid
12 form to this power plant.

13 The third approach was to look at the
14 actual data. And the National Response Center,
15 NRC, which is actually an arm of the Coast Guard,
16 has data since 1991 on the actual incidences. And
17 just about everybody complies with reporting
18 requirements. I mean it's a very good data bank.

19 Which shows in the past 16 years in
20 California we have had one accident involving
21 aqueous ammonia. That was in 1995. There have
22 been a number of accidents involving other
23 hazardous materials. And there have been a number
24 involving anhydrous ammonia. But there was just
25 one in 16 years. And that happened to be in the

1 Bay Area in Fremont. And 500 gallons of aqueous
2 ammonia were released.

3 Interestingly, no one has died as a
4 result of a release of aqueous ammonia or
5 anhydrous ammonia in California. About five or
6 six years ago there was an upset on Interstate 5
7 at the Los Banos turnoff there, highway 152, and
8 closed the highway for a number of hours. And the
9 driver died. He did not die of exposure to
10 ammonia. He died of the physical impacts of the
11 accident.

12 And basically that's what we see when
13 people get injured in hazmat accidents. The tanks
14 are not ruptured because of the very strict
15 criteria they have to be built to. And instead
16 there's a loss of life or there's injury because
17 of the actual physical damage to the body that an
18 accident causes.

19 So when we look at our transportation
20 risk assessment and come up with a figure of about
21 1.1 times 10 to the minus 6, one in a million for
22 this project of 14 trips a year, that's really an
23 over-estimation. Because we compare that to
24 reality.

25 So, three different ways and we come up

1 with the same answer. The risk is insignificant.
2 It's below a level of significance. And I so
3 stated in my testimony.

4 There is -- it's problematic to do a
5 risk assessment involving -- a cumulative risk
6 assessment involving the transportation of
7 hazardous materials throughout a community. By
8 far the greatest risk is posed by gasoline trucks.

9 And the number of hours and effort that
10 would have to go into conducting a cumulative
11 assessment where we actually looked at every
12 single delivery of a hazardous material to every
13 single location within the study area, is, quite,
14 frankly, very very difficult to do.

15 Even then I urge you to remember the
16 reality that we have found, in that these risk
17 assessments would be estimates only because the
18 reality shows that while accidents do happen, they
19 don't happen that often when it comes to these
20 DOT-certified trucks. And they certainly don't
21 happen in the history of the Energy Commission
22 certifying power plants in California.

23 We have not seen an accident on the way
24 to a power plant in California.

25 Q Dr. Greenberg, elsewhere in his

1 testimony Dr. Sarvey -- or Dr. Sarvey -- Mr.
2 Sarvey states that in the event of a catastrophic
3 ammonia release the project will expose employees
4 at the Muni maintenance center to ammonia
5 concentrations as high as 2000 ppm, which is a
6 fatal dose.

7 Do you agree or disagree with this
8 statement? And please tell us why.

9 A Well, the only part that I agree with is
10 that 2000 parts per million would be a fatal dose.
11 But, no, they would not be exposed to that. What
12 the City did in its modeling is follow the
13 procedure of using the RMP comp model. And that
14 is a model that quite frankly staff does not agree
15 with. It's used for planning purposes. We don't
16 use that model.

17 The proper model to use would either be
18 SLAB or HARP or Screen III. This is a volatile
19 substance. I wouldn't even use SLAB for it. SLAB
20 is much better for dense gas modeling as opposed
21 to buoyant plumes.

22 I modeled it two ways. I used EPA's
23 Screen III and I used the HARP model. I came up
24 with the same distance. The 75 parts per million
25 would be exceeded offsite only 10 to 13 feet

1 beyond the fenceline. That would be the western
2 fenceline. And that's only because the aqueous
3 ammonia tank and containment system are close to
4 that fenceline. If it had been moved one place or
5 another, it would not at all go offsite.

6 So, in reality you're not going to get
7 2000 parts per million. And what I failed to
8 mention is that they modeled -- the City modeled
9 without mitigation. So if there was no mitigation
10 and there was no containment that drained down
11 into a subsurface sump, instead it sat there
12 around 650 square feet pool, on a very hot day,
13 and using that model you'd get 2000 parts per
14 million.

15 However, I modeled with mitigation. The
16 City has committed, of course, to put in
17 mitigation. They would have to put in mitigation,
18 and we require that they put in mitigation. So I
19 modeled it with mitigation and you do not get 2000
20 parts per million.

21 You get, at the most, a couple hundred
22 parts per million right there, you know, if you
23 stood right over the containment, the secondary
24 containment berm. But at the fenceline you're
25 going to get -- at the western fenceline, that is,

1 you'll have slightly in excess of 75. And then
2 you'll drop below 75 once you're either 10 or 13
3 feet beyond there.

4 Q Can you talk a little bit more about the
5 RMP comp model in terms of its use for volatile
6 substances or it's used for nonvolatile
7 substances.

8 A No, they use it for both.

9 Q Okay. Do you have anything to add to
10 your testimony at this point?

11 A No.

12 Q Okay.

13 MR. RATLIFF: That completes Dr.
14 Greenberg's testimony. And I can't remember if
15 we've already moved it into evidence of not. But
16 if we haven't, we should.

17 HEARING OFFICER FAY: Okay. Any
18 objection to receiving Dr. Greenberg's testimony
19 as modified?

20 MR. SARVEY: No objection.

21 HEARING OFFICER FAY: No objection. So
22 entered at this point in the record. And the
23 witness is available for cross-examination.

24 Ms. Sol,, any questions?

25 MS. SOL : No.

1 HEARING OFFICER FAY: Mr. Sarvey, any
2 questions?

3 MR. SARVEY: Yes, I do.

4 CROSS-EXAMINATION

5 BY MR. SARVEY:

6 Q Dr. Greenberg, you're aware that there
7 has been an ammonia spill to the Watson
8 Cogeneration Facility in Carson within the last
9 few years?

10 A No, I was not aware that there was an
11 ammonia spill. They use aqueous ammonia at the
12 Cogen.

13 Q Over the past three years are you aware
14 that 13 aqueous ammonia truck spills have been
15 reported in California?

16 A No, I'm not aware of that number 13.
17 Where did you get that information from?

18 Q Excuse me, Dr. Greenberg, I'll ask the
19 questions.

20 A Oh, okay, that's fair.

21 Q Could you go back to your presentation
22 there, the last two slides, please.

23 A Sure.

24 Q You said there were 35 facilities within
25 that circle there?

1 A There were more than -- no, I did not
2 say that.

3 Q What was the number? I'm sorry?

4 A There were more than 35 that I
5 originally looked at, and I settled, this is
6 probably somewhere around 32, and some of them are
7 outside the circle.

8 Q So there's 32 facilities within a one-
9 mile radius that are transporting hazardous
10 materials through this minority neighborhood,
11 that's correct?

12 A No, I didn't say that they are
13 transporting it. They have it onsite. I'm
14 assuming somebody else may be transporting it
15 there. And I don't know the frequencies. And
16 these are the ones that I deemed, by virtue of the
17 nature of the chemicals that they have, as being
18 worthy of further investigation by myself.

19 Q So, 32 sites then?

20 A Thirty-two businesses here represented -
21 - I don't mean to be picky, but I want to make
22 sure you understand what this represents. It's
23 approximately 32 locations that store and use
24 hazardous materials. I don't know the frequency
25 of their delivery. And that I deemed appropriate

1 for further assessment.

2 I did find more than this that had some
3 hazardous materials stored, and that they used.
4 Obviously some of those did not make this map
5 because the quantities were so small, or the
6 physical state was solid, so that if there was a
7 release it would pose no risk to a passerby or the
8 community.

9 Q And with all those facilities your
10 testimony is that you did not perform a cumulative
11 transportation risk analysis of the hazardous
12 materials going in and out of that one-mile
13 radius? Am I interpreting that correct?

14 MR. RATLIFF: Objection.

15 DR. GREENBERG: That is correct.

16 MR. SARVEY: Okay, thank you.

17 MR. RATLIFF: Objection, I think it
18 mischaracterizes his testimony.

19 MR. SARVEY: He's already answered. I'm
20 happy with that.

21 MR. RATLIFF: I'm objecting to the
22 mischaracterization of the witness' testimony. If
23 you're going to ask the witness a testimony, ask
24 him a question, don't tell him what he testified
25 to, please.

1 MR. SARVEY: Okay.

2 MR. RATLIFF: His testimony speaks for
3 itself.

4 MR. SARVEY: Okay. Well, I believe he
5 answered, so I'm happy with that, thank you.

6 HEARING OFFICER FAY: Move along.

7 BY MR. SARVEY:

8 Q Can I have the next drawing, please.

9 Did you actually draw that, Dr. Greenberg?

10 A The computer program did.

11 Q Okay, thank you.

12 A You're welcome. That's all you wanted?

13 Q Yeah. And then I have a few more
14 questions for you.

15 Do you believe that a urea on demand
16 system is feasible for this project?

17 MR. RATLIFF: Objection, it's outside
18 the scope of the testimony.

19 MR. SARVEY: I believe it's already in
20 his testimony.

21 HEARING OFFICER FAY: I thought it was
22 in the testimony.

23 MR. SARVEY: It is in his testimony.

24 DR. GREENBERG: It was my understanding,
25 Hearing Officer Fay, that we were going to discuss

1 that at a different date. That anything that had
2 to do with ammonia on demand, SCONOx, SCR, we were
3 supposed --

4 HEARING OFFICER FAY: Okay, but
5 presumably, since you discussed it in your
6 hazardous material, there are storage and
7 transportation questions.

8 DR. GREENBERG: Certainly. It was just
9 my understanding that we were going to take those
10 issues up at another date.

11 HEARING OFFICER FAY: Mr. Sarvey, keep
12 that in mind.

13 MR. SARVEY: Okay. It was just part of
14 my testimony; it was one of my conditions and
15 that's why I asked the question because I'm
16 recommending urea on demand, so.

17 HEARING OFFICER FAY: Right, I
18 understand that.

19 MR. SARVEY: I can wait till later,
20 though.

21 HEARING OFFICER FAY: Well, I think his
22 testimony is pretty clear on the feasibility.

23 MR. SARVEY: Yeah, I think it is, too.
24 I'm just trying to point it out to the Committee,
25 so it doesn't get lost.

1 HEARING OFFICER FAY: Okay, we saw it
2 right there.

3 MR. SARVEY: Thank you, Mr. Fay.

4 HEARING OFFICER FAY: Anything further?

5 MR. SARVEY: Yeah.

6 BY MR. SARVEY:

7 Q I have some questions related to the 24-
8 hour security, that it's been changed to a camera
9 from an onsite security personnel, is that
10 correct, Dr. Greenberg?

11 A No. They would have an option to have
12 guards on 24/7, or a full CCTV, closed circuit
13 television, with pan, tilt, zoom, low light
14 capability, that views the entire perimeter and a
15 couple of other structures that would be viewable
16 from an offsite location.

17 Q Where is the offsite location going to
18 be? I mean how far is it from the power plant?

19 A I don't know, and actually that would
20 not really be relevant.

21 Q Do you have any indication how long it
22 would take for a response once some activity has
23 been spotted on the surveillance camera, say
24 terrorism or vandalism? Do you have any idea what
25 kind of response it would be from the time it was

1 noticed on the camera until someone arrived there
2 on the scene?

3 A San Francisco Police Department has
4 indicated minutes.

5 Q Okay. Have you observed any or looked
6 at any records concerning crime and vandalism in
7 the project area?

8 A No, I have not.

9 MR. SARVEY: That's all, thank you.

10 DR. GREENBERG: You're welcome.

11 HEARING OFFICER FAY: Anything further,
12 Mr. Ratliff?

13 Excuse me, Commissioner Geesman has a
14 question.

15 COMMISSIONER GEESMAN: Dr. Greenberg,
16 should we be concerned about the potential 75
17 parts per million crossing the fenceline onto the
18 Muni site?

19 DR. GREENBERG: Commissioner Geesman, in
20 my view, no. The reason for that is really
21 twofold. One, we have had siting cases in the
22 past where the 75 parts per million has showed up
23 as small segments offsite even in areas accessible
24 to the public.

25 The second reason is this is a site

1 owned and operated by the City and County of San
2 Francisco. They have proposed mitigation whereby
3 the workers will be trained to respond to a
4 warning system. The warning system is there at
5 the aqueous ammonia storage tank and the tanker
6 truck transfer site. It does include ammonia
7 sniffers that will detect ammonia in the air, and
8 then it would be able to sound an alarm.

9 The OSHA hierarchy of protection of
10 workers is engineering controls, followed by
11 administrative controls, followed by personal
12 protective equipment. The City and County of San
13 Francisco is proposing to use the first two.
14 They're engineering it, and they're providing
15 administrative controls. And I think that that is
16 more than adequate to insure that the Muni workers
17 are protected.

18 COMMISSIONER GEESMAN: Thank you.

19 DR. GREENBERG: You're welcome.

20 HEARING OFFICER FAY: I'll just follow
21 up on that. Would any members of the public be at
22 the Muni facility? Or is it all professional Muni
23 workers?

24 MS. PARKER: It's my understanding that
25 that property will be fenced and have restricted

1 access to the public.

2 HEARING OFFICER FAY: All right.

3 DR. GREENBERG: That would be my --
4 that's my understanding, also, that is what was
5 related to me by the applicant.

6 HEARING OFFICER FAY: Thank you. Okay,
7 anything further, Mr. Ratliff?

8 MR. RATLIFF: I only have one question
9 on recross.

10 REDIRECT EXAMINATION

11 BY MR. RATLIFF:

12 Q And that is, what are the nature of the
13 materials in the one-mile radius that you looked
14 at, in addition to those at the power plant site?
15 I think you said there were more than 30 different
16 locations that you looked at.

17 A The nature of the materials, as listed,
18 they're in my testimony on that table. I forgot
19 the table number. Mostly I wanted to focus on
20 those types of materials such as gases or volatile
21 chemicals that could, indeed, migrate.

22 And some of them included ammonia and
23 some of them even included anhydrous ammonia,
24 which is used as a refrigerant at Anchor Brewery
25 and at three other locations.

1 But for the most part we're looking at
2 small quantities of hazardous materials regardless
3 of whether they're solid, liquid, volatile or
4 gases. An acetylene tank, for example, was a
5 popular hazardous material. And that's really a
6 small volume. Even if that tank were to leak
7 you're really not going to have a problem even
8 downwind more than a couple hundred feet.

9 And, again, our modeling shows that you
10 really have to be very close to the San Francisco
11 Electric Reliability project for there to be an
12 overlapping plume in the significant risk
13 category.

14 MR. RATLIFF: I have no further
15 questions for Mr. Greenberg.

16 HEARING OFFICER FAY: Mr. Sarvey,
17 anything further?

18 FURTHER RECROSS-EXAMINATION
19 BY MR. SARVEY:

20 Q Dr. Greenberg, you were mentioning the
21 ammonia sensors, I believe you called them
22 sniffers. How are those powered?

23 A Electricity.

24 Q Electricity. Is that an independent
25 power system, or are they like connected to the

1 grid?

2 A That's a very good question. My
3 assumption is that they do not have what's called
4 a UPS, uninterruptible power supply, that they
5 are, indeed connected to the grid.

6 Q And would you agree that the most likely
7 chance of ammonia rupture would be probably during
8 an earthquake with electrical failure following,
9 as well?

10 A No, I wouldn't. If you look in the
11 hazardous materials testimony you'll see a
12 discussion on seismic safety. And I have looked
13 at the results of the Kobe earthquake, the
14 Northridge earthquake, the Loma Prieta earthquake
15 and the Nisqually earthquake in Washington State.

16 The newer hazardous materials storage
17 tanks designed to these types of standards did not
18 rupture at all during the Nisqually quake. Some
19 of the older ones did rupture, and these were few
20 and far between. I think there was only five or
21 six of them at the Northridge quake.

22 So I am not concerned that there would
23 be a rupture of these storage tanks.

24 Q Do you think it would be wise to equip
25 these sensors with an uninterruptible power

1 supply?

2 A You know, Mr. Sarvey, this is something
3 that is a good suggestion that I will look into.

4 Q Okay.

5 A And talk with the City and see what kind
6 of power supply they have.

7 Q Okay. I have one more question. You
8 were talking about the impacts to the Muni
9 maintenance people in response to Commissioner
10 Geesman's question. And in your consequence
11 analysis did you include the complete failure of
12 the tank and a truck that would be offloading onto
13 the --

14 A Interestingly, Mr. Sarvey, the failure
15 of the truck resulted in a much lower
16 concentration than the failure of the tank. And
17 it's really not so much volume dependent because
18 the source term is not depleted in my analysis,
19 which, of course, in reality it would be.

20 But rather it's the surface area of the
21 pool that's open to the atmosphere. And so it
22 really doesn't matter whether you've got 100
23 gallons there or you've got 100,000 gallons. It's
24 just a deeper pool.

25 But I considered the mitigation. And

1 that's really the difference, once of the major
2 differences. And, of course, I used two different
3 models than they used. But when you consider the
4 mitigation, which will be there, then you get a
5 much different result.

6 MR. SARVEY: Thank you, Dr. Greenberg.

7 DR. GREENBERG: You're welcome.

8 HEARING OFFICER FAY: Is that all?

9 Anything further, Mr. Ratliff?

10 MR. RATLIFF: No.

11 HEARING OFFICER FAY: Okay. Thank you,
12 Dr. Greenberg.

13 DR. GREENBERG: You're welcome.

14 HEARING OFFICER FAY: Appreciate your
15 testimony.

16 And now, Mr. Sarvey, you have your
17 testimony on the hazardous materials?

18 MR. SARVEY: I have a small problem with
19 my testimony. I have some exhibits that were
20 submitted by the applicant that I need to provide
21 copies for, and I've been looking for the Public
22 Adviser, but she hasn't been around.

23 So, I'd like --

24 HEARING OFFICER FAY: These exhibits
25 were submitted by the applicant?

1 MR. SARVEY: They were submitted by the
2 applicant, but I'm not sure, once again, that they
3 included them in their list. So, I'd like to just
4 take a moment, if I could, and run this up to the
5 Public Adviser and get some copies, or somewhere
6 that I could get some copies so everybody's --

7 HEARING OFFICER FAY: Okay, let's take
8 a -- would ten minutes be enough time for you?

9 MR. SARVEY: I think so.

10 HEARING OFFICER FAY: Okay. We'll take
11 a ten-minute break and be back here.

12 (Brief recess.)

13 HEARING OFFICER FAY: Mr. Sarvey, do you
14 want to make your presentation on hazardous
15 materials.

16 MR. SARVEY: Sure. The documents that
17 I've submitted to you were supplied by the City
18 under data request of San Francisco Community
19 Power, dated July 8, 2004, data request number 5.

20 MS. SOL : We have an objection to the
21 introduction of these documents.

22 HEARING OFFICER FAY: Okay, Ms. Sol,, do
23 you want to explain the reason for your objection.

24 MS. SOL : Okay. These are prepared
25 testimony from the Potrero 7 case. Again, it's

1 testimony, and the rule for the introduction of
2 testimony is that the witness be unavailable, or
3 you can introduce prior inconsistent statements of
4 a particular witness. But these are not witnesses
5 that the City has presented now. And so this
6 testimony is hearsay, it was never introduced.

7 HEARING OFFICER FAY: Okay, Mr. Sarvey,
8 what do you have to say?

9 MR. SARVEY: Yeah, this testimony here
10 verifies statements made in my testimony
11 concerning the LORS of San Francisco, and they're
12 clearly spelled out in this testimony. I assumed
13 the City was honest when they presented this
14 testimony to the Commission in the Potrero 7. And
15 it's used to basically determine the LORS of the
16 Department of Public Health.

17 HEARING OFFICER FAY: Okay. Well, the
18 witnesses -- you haven't given any evidence that
19 the witnesses are not available, and there's any
20 other reason we should receive it as testimony. I
21 think there may be some other ways that you can
22 argue what the LORS are in the City of San
23 Francisco. And so if it really comes down to
24 that, you may want to --

25 MR. SARVEY: I would note that I did

1 request Mr. Lee at the prehearing conference
2 statement, which is one of the statements, and
3 that contains two issues related to the Department
4 of Health LORS.

5 But as far as the other ones,
6 administrative notice is good enough for me. I
7 just want the Committee to be aware that in past
8 testimony the City of San Francisco has not only
9 stated their LORS. They've also provided
10 conditions of certification that are very similar,
11 if not exact, to the ones that I'm requesting here
12 to enhance environmental justice. So that's the
13 purpose of the exhibit. And judicial notice is --

14 HEARING OFFICER FAY: Okay. Well,
15 presumably they're in the administrative record if
16 they were part of a data response.

17 MR. SARVEY: Yeah, but like I said
18 before, the way that data response was handled,
19 there's really no way to categorize the exhibits
20 that are in there. So, I couldn't just assume
21 that the Committee would be aware of them.

22 HEARING OFFICER FAY: Okay.

23 MR. SARVEY: Thank you.

24 MR. RATLIFF: Could I ask --

25 HEARING OFFICER FAY: Did you want --

1 MR. RATLIFF: Could I ask a question of
2 clarification. Am I missing something? I don't
3 see any LORS in here for the City of San
4 Francisco. I see a statement in this testimony
5 which says that the level should be 35 ppm. Am I
6 missing something?

7 HEARING OFFICER FAY: Maybe Mr. Sarvey
8 will point out just where he thinks it's citing
9 LORS.

10 MR. SARVEY: Are you referring to Mr.
11 Lee's testimony?

12 MR. RATLIFF: Yes.

13 MR. SARVEY: I'd direct you to page 3,
14 item 6.

15 MR. RATLIFF: That's what I see. He
16 says the level of concern for ammonia exposure
17 should be set at 35 ppm. I see that as his
18 opinion. I don't see any standard adopted or
19 enforced by the City of San Francisco for 35 ppm
20 in that statement. Am I missing a LORS here?
21 Because we're talking about this as if this is a
22 LORS of the City of San Francisco.

23 MR. SARVEY: Well, it's Mr. Lee's
24 testimony. He represented the Department of
25 Public Health, so I'm assuming he's quoting LORS,

1 not just things off the top of his head.

2 HEARING OFFICER FAY: Okay, well, why
3 don't you just go ahead and make your
4 presentation.

5 MR. SARVEY: Sure.

6 HEARING OFFICER FAY: We have your
7 written testimony, so if you want to briefly
8 summarize.

9 DIRECT TESTIMONY

10 MR. SARVEY: Basically the testimony is,
11 is that the majority of the hazardous materials
12 are being stored in southeast San Francisco where
13 the minority population is. It's been admitted by
14 all parties that they have a undue burden from
15 industrial and pollution.

16 So basically my testimony is that number
17 one, it outlines the large quantities that are
18 being stored there; reinforces what Dr. Greenberg
19 was saying. And it basically outlines the
20 requested conditions of certification that we
21 believe would be health protective.

22 We believe that 2000 ppm at the Muni
23 Maintenance Center is extreme; and there should be
24 some additional mitigation measures taken. And we
25 also believe that the RMP comp would yield a much

1 higher end-point.

2 So we believe that the Department of
3 Health San Francisco LORS would require these
4 modifications to the assessment to comply with
5 their LORS.

6 HEARING OFFICER FAY: Okay. And would
7 you like to move that testimony labeled exhibit
8 11, the testimony of Robert Sarvey, hazardous
9 materials, into evidence?

10 MR. SARVEY: Yes, I would, thank you.

11 HEARING OFFICER FAY: Okay. Any
12 objection to receiving that? I hear none, so
13 moved.

14 Mr. Sarvey, did you look at the exhibit
15 list? Do you know which exhibit that is?

16 (Pause.)

17 HEARING OFFICER FAY: We can get that.
18 So are you available for cross-examination?

19 MR. SARVEY: Yes, I am.

20 HEARING OFFICER FAY: Okay. Ms. Sol,.

21 MS. SOL : Your Honor, I guess I just --
22 what is the status of the other documents?

23 HEARING OFFICER FAY: They are not
24 received into evidence.

25 MS. SOL : Okay. Then I have no

1 questions.

2 HEARING OFFICER FAY: Okay.

3 MR. SARVEY: They already are, they
4 already are evidence if it's submitted by the City
5 in their --

6 HEARING OFFICER FAY: They are in the
7 administrative record in that they are in the
8 file.

9 MR. SARVEY: I believe they've been --

10 HEARING OFFICER FAY: They're part of
11 the docket file if they came in as a data
12 response.

13 MR. SARVEY: I believe they've been
14 listed as exhibits in there, in their statement
15 here.

16 HEARING OFFICER FAY: These testimonies?

17 MR. SARVEY: Yes.

18 HEARING OFFICER FAY: What exhibits are
19 they listed as?

20 MR. SARVEY: In their responses to San
21 Francisco Community Power.

22 HEARING OFFICER FAY: Well, you'd better
23 tell us which exhibit they're found in then.

24 MR. SARVEY: Okay.

25 MS. SOL : Your Honor, the documents

1 that we are submitting as our testimony are the
2 responses, themselves, not all of the backup
3 documents. We are not submitting these documents
4 into evidence.

5 HEARING OFFICER FAY: Okay. Mr. Sarvey,
6 if you find that you can cite to a place in the
7 evidentiary record where they're found, do so in
8 your brief. But we're not going to argue about
9 that now.

10 MR. SARVEY: Okay, well, they're listed
11 on the project description, engineering and
12 natural gas supply under see prior filings,
13 applicant response to Community Power data
14 requests. So they're already in the evidentiary
15 record.

16 HEARING OFFICER FAY: Okay. And, Ms.
17 Sol,, you have no cross?

18 MS. SOL : I have no cross.

19 HEARING OFFICER FAY: Okay, Mr. Ratliff?

20 MR. RATLIFF: No.

21 HEARING OFFICER FAY: Okay. All right.
22 Thank you, Mr. Sarvey.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER FAY: All right. Now,
25 I'd like to know from the parties if any

1 situations have changed since our prehearing
2 conference regarding the topics that remain.

3 We will, as I mentioned, shift traffic
4 to next Monday, May 1. And the other topics
5 include local system effects, socioeconomics,
6 waste management, soil and water resources.

7 And then we have the remaining topics
8 that will be addressed in San Francisco.

9 Is there any change on any of these from
10 your prehearing conference that might affect our
11 scheduling, Ms. Sol,?

12 MS. SOL : No. The only change is the
13 City's motion and the Committee's order, which
14 allows for the contaminated site issues to be
15 addressed and testimony to be submitted on May
16 1st, and to be heard on May 22nd. That's the only
17 change.

18 HEARING OFFICER FAY: Right. Mr.
19 Ratliff.

20 MR. RATLIFF: Well, the staff would
21 suggest that it might make more sense just to move
22 waste management and soil and water resources to
23 the San Francisco hearing, rather than attempting
24 to do them twice.

25 I'm not sure, based on our prehearing

1 conference it seemed to me that the interest in
2 those issues had to do with remediation in any
3 case. And not with whatever other aspects of
4 those issues are addressed in the testimony.

5 If I'm correct about that, and Mr.
6 Sarvey agrees, then we might be able to dispense
7 with the Monday hearing on waste management and
8 soil and water, and just do it all in one blow in
9 San Francisco.

10 MR. SARVEY: I would agree with Mr.
11 Ratliff.

12 HEARING OFFICER FAY: Ms. Sol,, does
13 that work for you? I mean I think part of the
14 reality is that it is difficult to separate some
15 of these, especially since Mr. Sarvey's approach
16 is focused on the excavations for the linear
17 facilities. And I believe he's arguing that it
18 affects both waste and soil and water. Is that
19 correct, Mr. Sarvey?

20 MR. SARVEY: That's correct.

21 HEARING OFFICER FAY: Yeah. So, would
22 you be willing to have your witnesses come on May
23 22nd, rather than May 1st, on waste management and
24 soil and water resources?

25 MS. SOL : The witnesses on the

1 contamination issue are certainly prepared to be
2 there on the 22nd, because they're on notice. Can
3 I just confer quickly and see if I can just --

4 HEARING OFFICER FAY: Sure, let's go off
5 the record.

6 (Off the record.)

7 HEARING OFFICER FAY: What we will do is
8 hear from the applicant tomorrow morning on
9 whether it works for them to shift waste
10 management and soil and water resources from May
11 1st to May 22nd.

12 The other parties support this idea, and
13 we think it will help compress the record and make
14 it less confusing. So, if the applicant is
15 amenable to that, then we'll get word out tomorrow
16 to the parties. But it looks likely at this
17 point. Okay.

18 Any other matters before we adjourn
19 today?

20 MR. SARVEY: I have one housekeeping
21 matter.

22 HEARING OFFICER FAY: Yes.

23 MR. SARVEY: I wanted to move exhibit
24 77, it was my hazardous materials testimony. We
25 needed that number for the record.

1 HEARING OFFICER FAY: Thank you. Any
2 objection to receiving that? I think we did
3 receive it. Yeah.

4 Okay, so that is -- thank you for
5 finding that number, Mr. Sarvey.

6 MR. SARVEY: Thank you.

7 HEARING OFFICER FAY: All right, thank
8 you, all. We're adjourned.

9 (Whereupon, at 4:05 p.m., the hearing
10 was adjourned, to reconvene at 10:00
11 a.m., Monday, May 1, 2006, at this same
12 location.)

13 --o0o--

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 8th day of May, 2006.

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